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Implementing a better response to victims' needs

Handbook accomplished in the framework of the project "Restorative Justice, Urban Security and Social Inclusion: a new European approach"
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Foreword

This handbook, “Implementing a better response to victims’ needs”, has been realized in the framework of the project “Restorative Justice, Urban Security and Social Inclusion: a new European approach”, financed by CRIMINAL JUSTICE Programme EU 2008-2010, JUST/2010/JPEN/1601, coordinated by the CRESM.

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Table of contents

General introduction

Since the rediscovery of 'the victim' in the western world some decades ago, we now recognise that victims have important needs and rightful expectations to be respected when they enter into contact with police services, judicial authorities, social agencies, medical services, the media, and other actors in the social field. Numerous are the stories and reports that inform us about the fate of victims of crime. Research from the field of victimology provides us with knowledge of the wide-ranging consequences for victims, in particular at financial, physical, psychological, social and legal levels. We now understand much better victimisation as a personal and social process, and we have become familiar with phenomena such as "secondary victimisation". Public opinion has become aware of victims' issues, and many even identify themselves with "the victims".

In many countries, small scale initiatives have been taken in order to better meet the multi-faced needs of victims of crime. Victim support pioneers and local policy makers have found support and guidance in a series of international regulations from the United Nations, the Council of Europe and – more recently - the European Union. However, evaluative research in various countries points to the restricted nature of many legal and social provisions for victims. Improving the legal position for victims of crime within the criminal justice process effectively, and implementing victim assistance in practice in a proper way, seems to be much more complicated than thought, and remains a big challenge in most European countries. We are still far from the situation where all victims of crime are reached with an offer of support. Victim assistance programmes seem to reach only a selective group of victims, and the effects of interventions are not always clear. Legal rights are often not effectuated in practice.

At the same time, we have witnessed the emergence and growth of a new movement in Europe and beyond, indicated as "restorative justice". In Europe at present, mediation between victims and offenders is the predominant method to put this new approach to crime and criminal justice in practice. However, new restorative justice models are being developed and moreover, many values and principles of this broad movement exercise their influence on the way justice institutions and social actors operate. Although restorative justice has put forward reparation to the victim as one of its core objectives, practices in this field have been criticised for being rather offender-oriented. Furthermore, the potential of restorative justice programmes remains unreached in most European countries.

Hence, victim assistance and restorative justice represent much needed and, at least in theory, very promising practices. These two types of intervention should be each others' allies in a natural way, and should support each other in their permanent development. However, confronted with their limits in practice, it is of utmost importance that projects are conceived and implemented in a way that experiences and insights are gained on how to start and implement such practices fruitfully. This handbook wants to be a modest contribution towards this goal. It is prepared on the basis of a pilot project carried out in the Western part of Sicily, in close cooperation with organisations in three other European countries: Belgium, Ireland and Spain. During almost two years, experiences have been exchanged and a pilot project has been set up in the province of Trapani, Sicily, under the leadership of the research institute CRESM. Thanks to the enthusiastic collaboration with the local partners and the input from the European partners on the basis of their experiences, valuable

knowledge has been developed on how new programmes can be set up. The most important achievement of this project was that programmes of victim assistance and restorative justice have been conceived in a coordinated and complementary way.

Therefore, the aim of this handbook is to offer practical guidance on developing and implementing new programmes in the field of victim assistance and restorative justice within a European context. First, because throughout the handbook many examples have been used from the countries involved in the project, victim assistance and restorative justice in these countries are contextualised. Then, the first chapter deals with the reality of victimisation, victims' needs and social responses. This allows us, in a second chapter, to discuss the main characteristics and requirements of victim assistance programmes. The third chapter analyses more in-depth "restorative justice": what it is, what kind of practices it entails, how it is organised, what the results are, etc. Chapter four then brings victim assistance and restorative justice together, and examines how both practices can be implemented in a complementary way. This analysis results in a list of practical recommendations at the end of the handbook.

Because this handbook has not the objective to be an academic report, references to the literature and recommended readings are only included at the end of each chapter.

We hope this handbook will contribute to the further development of good practices in victim assistance and restorative justice, in order to better meet the needs of victims of crime and to support justice mechanisms in our societies where all involved can participate in a democratic way.

Preliminary: Victim support and restorative justice in Belgium, Ireland, Italy and Spain

Introduction

Belgium, Ireland, Italy, and Spain were the four partner countries in the project "Restorative Justice, Urban Security and Social Inclusion: A New European Approach", coordinated by CRESM, the Sicilian Centre for Social and Economic Research in the South. As many experiences have been exchanged between the partners during this two years project, this handbook has been conceived against the background of developments in these countries. Therefore, the function of this preliminary is to provide information about victim support and restorative justice developments in these four countries in order to situate and contextualise the topics dealt with throughout this handbook, including many references and examples presented in the following chapters. Although an attempt has been made to also include examples from other countries in order to also highlight other approaches and rationales in the given field, the four aforementioned countries form the backbone of the materials collected and reflected upon. But, as we will see, these four countries already show a huge diversity amongst them: they have different backgrounds and stages of development when it comes to victim support and restorative justice. Therefore, this preliminary should help to compare and highlight the diversity of approaches and stages of development in the field of victim support and restorative justice in general.

1 Belgium

Any presentation of the Belgian state of affairs requires some insight in the complex political and organisational structure that characterises the country.

Belgium is a federal state that comprises three different “cultural communities” and “three economic regions”, which do not totally coincide. The communities are divided mainly according to language issues (Dutch, French and German speaking populations) and the regions by economic and territorial issues (Flanders, Wallonia and Brussels). While issues such as justice, finances and interior are of the competence of the federal state, issues such as welfare, education and culture are of the competence of each community or region. This means that victims’ issues are addressed by the regional level when a social care perspective is adopted and by the national level when legislative reforms are implemented.

Despite this complex structure, Belgium has been characterised by a strong development of both victim policies and restorative justice during last decades. Unlike the Anglo-Saxon countries, it is a country adopting a civil law system. As we shall see, this has an impact on the practices in the field of criminal justice.

1.1 Victim policies and victim support in Belgium

At the regional and national level, many initiatives have been taken to support the implementation of victim oriented practices and policies from the beginning of the 1980s onwards. This has been the case, for example, in matters of social support, financial aid, the role of the police and judicial authorities in victim assistance, and the definition of the position of the victim in the procedure of

conditional release. However, first developments started with the creation of victim support centres in the middle of the 1980s *("centres d' aide aux victimes"* and "*diensten voor slachtofferhulp"*). These centres, operating as non-governmental organisations and funded by the respective Communities, offered social, psychological and legal support to victims of all types of crime. These initiatives originally functioned quite autonomously as part of the "Services for forensic welfare work", but were relocated in the 1990s into the "Centres for general welfare work". These social centres are highly professionalised, but also involve volunteers, for example in their victim support work. Central is the psychological and social, and not the judicial or institutional, perspective. The centres for social welfare work can also refer cases to more specialised agencies if required (e.g. centres for mental health, or victim-offender mediation services). In a general way, the victim support centres, both in Flanders and Wallonia, have acted as driving forces for the early development of victim policies in the country.

From 1991 onwards, legislative initiative has been taken to allocate to all police services an elementary task of assistance to victims of crime, mainly in terms of providing information and offering practical help. Hence, victim assistance is considered to be a fundamental task of every police officer who enters into contact with victims. The implementation of this general victim assistance within the police services is facilitated by the support from a specialised police officer, mandatory to be appointed in every police district.

Another provision that deserves special attention is the establishment of a service for reception of victims at the level of the prosecutors' offices, since 1994. This type of assistance is offered by the so-called "justice assistants" operating under the "houses of justice" in each judicial district. Their task aims to prevent secondary victimisation, to provide practical information, to support the victim throughout the criminal procedure, and to refer cases to specialised services if needed. They eventually inform the victim about the sentence imposed on the offender and on the execution of the (prison) sentence.

Victim assistance at the level of the police and within the public prosecutors' services fall under the policy competence of federal - governmental and judicial - authorities. Next to this, as mentioned above, there are victim support centres operating from a welfare perspective under the competence of the Flemish and the French communities. Balancing the respective tasks and establishing cooperation between all these agencies at local and national level has been regulated by cooperation agreements or protocols between the federal state and the communities and regions. A National Forum for Victim Policies has been created in 1994, in order to further develop effective support and cooperation between all agencies in society that have specific duties towards victims of crime. However, this Forum never got an official status and lacked the power to really influence policy making. Currently this Forum is not working anymore due to a lack of political interest and funding.

1.2 Restorative justice in Belgium

Belgium has a fairly developed legislation in the field of restorative justice, that is situated both on a federal and on a community level. This legal framework was developed as a consequence of many pilot projects in this area. Note that these projects started over twenty years, and that they sometimes have been developing differently between the northern (Dutch speaking) and southern (French speaking) part of the country, taking into account, for example, their cultural identity. One

of the major and influential projects in the field of restorative justice was "mediation for redress", which we will study later. It initially (1993-1995) concerned a local action-research project from KU Leuven in cases of serious crime committed by adult offenders, which led to the start of a general implementation in Flanders and, later, to national legislation.

For minors, the Youth Justice Act (1965, revised in 2006) contains different restorative offers, such as mediation, group conferencing (French Community: "la concertation restauratrice en groupe" (CRG) Flemish Community: "herstelgericht groepsoverleg" (Hergo)) as well as educational services and community service. Mediation can be considered at the stage of prosecution, whereas all measures can be taken by the juvenile court. They can be implemented independently or in a complementary manner. Note that mediation and group conferencing are voluntary, the young person and the victim can therefore refuse to take part.

For majors, different laws govern the restorative justice programmes. In the field of mediation, two different practices must be mentioned. On the one hand, there is "penal mediation" at the level of the prosecution stage, which is regulated by the law of 10 February 1994. On the other hand, the law of 22 June 2005 regulates the practice of the already mentioned "mediation for redress", which occurs in parallel and thus independently of the judicial process. Mediation may therefore involve any type of crimes, regardless of their severity.

Furthermore, there is a limited practice of "local mediation" for offences of minor importance in a few cities in Flanders and in Brussels. This type of intervention has been set up following the finding that the dismissal of the case did often not meet the expectations of the victim, and in order to reduce the overload of administrative work for police and prosecutors. When this type of mediation is successful, it allows "no further action" at the level of the police.

Finally, mediation can also take place in the framework of "municipal administrative sanctions", initially implemented by the law of 1999 followed by different revisions. The objective here is to fight feelings of insecurity generated by incivility and nuisances. In 2013, this instrument was subject to adjustment again, on the basis of the lowering of the age of legal responsibility for administrative penalties from 16 to 14.

Community service in the field of adult criminal law can also, under certain conditions, be considered as part of restorative justice. Community service can be applied in the framework of "penal mediation" at the level of the public prosecutor, but also as autonomous sanction by the judge through the law of 17 April 2002.

Some practices of restorative justice are functioning without legal framework at present. This is, for example, the case for an experimental project of "peacemaking circles" initiated by KU Leuven in cooperation with the NGO Suggnomè.

2 Ireland

Ireland is a country with a common law system which has brought implications for the development of victim policies and restorative justice. Moreover, the country has been hit hard by the economic crisis. This fact may have a significant impact in terms of funding for the development and evaluation of restorative justice programmes and policies for victims.

2.1 Victim policies and victim support in Ireland

Recently, Ireland has tried to improve the position of the victim in the criminal justice system through the "Justice for Victims initiative", announced in 2008. The main strategies announced in this initiative involved administrative changes (such as the establishment of the "Victims of Crime Office" and the reinforcement of the "Commission for the Support of Victims of Crime") and legislative changes (such as reform of the Victim Impact Statement mechanism, already implemented in the country). In 2010, the "Commission for the Support of Victims of Crime" published the Victims Charter. This document describes in a simple language all elements of the criminal justice system, explaining what victims can expect from the different actors of the criminal procedure. The Charter also covers the work of instances such as the Criminal Injuries Compensation Tribunal, the legal Aid Board, and the Crime Victims Helpline. The Charter is an informative document that does not provide legally binding rights to victims, for which it has been criticised as an insufficient tool to improve the position of the victim in the Irish criminal procedure.

In terms of victim support, the only service with national coverage is the Crime Victims Helpline, launched in 2005. This helpline aims to work as a "front line" service offering support and an initial contact for victims of crime and their families, providing referrals and practical information as well. The Crime Victims Helpline was not conceived therefore as a service that could provide follow-up to the cases received. In Ireland, other different local and more specialised experiences have been implemented as well, focusing on certain types of victims. Some of these are Support after Homicide, Court Support services, and Advocates for the Victims of Homicide. Recent evaluations indicate that such experiences appear to be unarticulated and not well known by the population.

2.2 Restorative justice in Ireland

Ireland possesses a legal framework, exclusively for restorative justice practices in the field of juvenile justice. The main legislation covering the field of juvenile justice is called the "Children Act 2001". This text is oriented to practices of diversion vis-à-vis the “classical” justice system. Although this text facilitates the use of restorative justice, we do not find explicit references to it. Concerning minors, various diversion programmes exist: the "Garda Diversion Programme" (the child is placed under the supervision of a liaison police officer for youth during a certain period), the "Restorative Cautioning and Conferencing" or "court-referred Probation Service Conference" (this programme is to explore how young people can take responsibility for their behaviour and its consequences and, if possible, offer apologies to the victim. The conferences also aim to develop a plan for the future of the young).

As for adults, two pilot projects on restorative justice are running in Nenagh and Tallaght. First, the "Community Reparation Panel" in Nenagh provides the court an additional way to handle violations in a pre-court stage, when the author has pleaded guilty or has been declared guilty for an offence.

The services of restorative justice in Tallaght support two types of restorative practices: the "offender reparation panel" and the victim-offender mediation.

Next to this, there is the "Garda Adult Cautioning Scheme" which is a practice of diversion vis-à-vis the traditional judicial process for adults. This procedure can be initiated when the prosecution of the offence is not considered necessary for the public interest.

3 Italy

Italy is a civil law country with a system of mandatory prosecution for certain categories of offences (for other categories, the prosecution of the offence is dependent on a complaint), which can be a hinder for the development of restorative measures at the stage of prosecution. In recent times, Italy has been confronted with an unstable political situation. Some regions are affected by the presence of the mafia which is an economically, politically and socially unavoidable actor. This situation is not without complications when dealing with the criminal justice system in general but especially for the implementation of programmes in the field of restorative justice, which does not fit into the logic of actions implemented by the mafia. Furthermore, the Italian economy has been severely degraded by the economic crisis that Europe suffers for several years now. This is not conducive to the development of policies in favour of the victim and of restorative justice programmes.

3.1 Victim policies and victim support in Italy

In Italy, the main concern in relation to victims of crime has been the establishment of a compensation fund for certain types of victims, usually limited to the phase “processale e risarcitoria”. This concerns victims of terrorism, organised crime, extortion, “vittime del dovere”, and gender violence. There is no compensation scheme for other types of crime.

Human trafficking has attracted the special attention of policy makers, given the high prevalence of the problem in the country due to the human traffic from Africa to Sicily. Several human trafficking related regulations have been included in the criminal code in the last years, in order to fulfil the requirements of the United Nations. The country, therefore, is still lacking a more integral development, oriented at different measures to improve the position of the victim in the criminal justice procedure.

Regarding victim support, in Italy there is no victim support organisation with national coverage. Victim support has been developed, instead, as inarticulate and non-documented experiences usually implemented at a local level. They address different types of victims, i.c. most of the time victims of gender-based violence. The consequence of this situation is the delay for victims of crime of access to victims’ services. In fact, the International and European Victimisation Survey carried out in 2004 and 2005 showed that only 3% of Italian victims had access to victim support services, locating the country in one of the lowest positions of the world.

One specific example of victim services is the model of the Trapani Province, a centre that aims at providing a more integrated assistance to victims of crime combining services traditionally related to victim support (such as psychological help, orientation and legal aid) with others related to a

restorative justice approach, such as penal mediation. In addition, it aims at developing coordination at the local level with services already offered in the territory.

3.2 Restorative justice in Italy

Italy has some well-developed restorative justice practices, of which some are recognised "indirectly" by the legislative framework.

Concerning minors, two sections of the 448/1988 Law can be taken into account for the development of practices in the field of restorative justice. Article 9 ("personality assessment") can be used during the stage of investigation by the public prosecutor, when a request for a mediation is done to the social service of the court. These services answer this request themselves or entrust the task to a local mediation service. If an agreement is reached in the mediation process, the public prosecutor can ask the judge to close the case. Article 28 ("probation") suspends the case and the judge sends the file to a mediation centre with the purpose that the minor performs a reparation or mediation. If the result is positive, the judge suspends the case.

For adults, a mediation programme is offered by the justice of peace court. The justice of peace court deals with facts of minor importance. It has no power to impose a detention. Emphasising the need to enhance the role of the victim (which is traditionally neglected in the classic Italian system), paragraphs 4 and 5 of Article 29 of the Law 274/2000 allow to the magistrate of the justice of peace court to order to the parties in the first place an attempt to reach a conciliation after the conflict. A successful mediation results in a settlement of the case.

Certain niches in the legislation allow the establishment of mediation schemes during the execution of the sentence. This is the case for some mediation practices conducted in prisons of the province of Turin and Milan. They pay a special attention to the participation of the victim.

Some experiments take place outside a legal framework. This is particularly the case of the "KORE" centre set up by the Sicilian Association CRESM. The KORE centre is a place that provides help and a free and confidential support for people in conflict. A central feature of the centre is the establishment of a mediation service, understood as the ability for two or more people in conflict to meet, talk and listen freely in a neutral space, provided for this purpose.

We must, finally, bear in mind that this description does not take into account some projects we did not receive any information from. In this context, cooperation protocols between different actors, playing a role in the implementation of mediation, are realised in order to mitigate the lack of legislative framework. Until now, there are no practices of conferencing or sentencing circles in Italy.

4 Spain

Spain has a central government and is composed by autonomous communities, also on the level of justice and social welfare. This explains why the development of victim support and restorative justice schemes varies considerably from region to region.

4.1 Victim policies and victim support in Spain

As in Italy, in Spain there is not a unique legislative body oriented to improve the situation of victims of crime in general terms. To the contrary, Spanish legislation has developed separate legislative codes oriented to address specific aspects such as financial aid and social assistance to victims of crime, solidarity with victims of terrorism and free legal assistance. For example, since 1995, victims have the right to obtain information about financial aid. In 2004, and as a reaction to the high rates of homicide against women that usually impacted the public opinion, the "Comprehensive Protection Measures against Acts of Gender Violence" were established, which indicates the special attention the Spanish government is paying to victims of gender-based violence, giving to this group of victims more regulated rights than to other victims. This act is applicable in all Spain and includes especial protective measures for gender-based violence.

As a consequence, and in terms of victim assistance, Spanish policies have given priority to just certain groups: partner violence victims, minor victims in the context of family violence, victims of juvenile violence, victims of terrorism, victims of traffic accidents and of violent crimes in general. However, most of these measures have been limited to economic and social assistance (e.g. labour integration of victims of domestic violence).

In 2010, the Organic Law 5/2010 included new penalties and the increase of sentences for crimes such as human trafficking, sexual offences against children minor of 13 years old and child prostitution. This recent inclusion reflects a major concern for vulnerable victims.

In terms of victim support, the "Citizens' justice rights charter", signed in 2002, states the governmental intention to promote a better development of victim support offices, offering an integral service to all victims of crime. This intention changed in 2003 when a law on the protection of victims of domestic violence was promulgated. This law aimed at a coordinated and integral response to the problem, including protective measures for victims of gender-based violence (in both the social and civil sphere). The coordination of these different measures should be led by a local coordination point. The instance appointed with this task at the national level is the victim assistance office. This implied a turning point in the focus of victims' services. Since then, victims' services have been mainly oriented to fulfil this task, assisting less frequently other type of victims.

Despite changes, Spain is still on its way to fulfil the requirements of the European Union in terms of ensuring a minimum standard of services and rights for all victims of crime. Data of the International and European Victimisation Survey carried out in 2004 and 2005 showed that Spain - precisely as Italy - is offering victim support to only 3% of its victims.

4.2 Restorative justice in Spain

Restorative justice in Spain has only a legal framework for minors. This does not mean that there are no practices developed in the field of restorative justice for adults.

The Organic Law 5/2000, which covers the area of juvenile justice, offers the opportunity to enter into an "alternative" procedure for minor offenders between 14 and 18, who committed an offence of varying severity. The law adopts the principle of prosecutorial discretion and establishes the reparation of the damage to the victim by the author as a way to cancel a further prosecution. If the repair process is successful, the prosecutor asks the judge to close the file or cancel the process. There are different possibilities in the law to cancel further prosecution. Article 18, for example,

facilitates a diversion policy through the application of certain criteria (crime of minor importance ...). Another example is Article 19, which intervenes in the stage of the trial.

For adults, restorative justice practices are directly related to the criminal justice system. These practices can perform three functions at different moments of the criminal justice process:

- As mitigating circumstance which results in a reduction of the sentence in general.
- As a factor to be considered by the judge. The judge may suspend or replace a prison sentence in the case of crimes punishable by imprisonment of less than two (exceptionally five) years by a service to the community, for example.
- During the execution of the sentence (e.g. as a benefit in function of a possible parole).

Chapter 1: Victims, victims' needs and the social response to criminal victimisation

Introduction

As explained in the introduction of this handbook, our aim is to offer practical information and guidance for those who want to start or to further develop victim assistance and restorative justice (RJ) practices in their countries. In order to fulfil our task, we need, as a first step, to discuss the issue of criminal victimisation. In particular, we would like to discuss what does it mean to be a victim of crime, what the needs of victims of crime are and what challenges we may face when working with victims of criminal offences. These are the topics that this section deals with.

The main objective of this chapter is therefore to discuss key issues related to criminal victimisation and to contextualise the content of this handbook in general terms. We will explain our main assumptions about victims of crime and justify why we consider victim assistance programmes and RJ to be valuable responses to victims' needs.

The content of this chapter is meant introductory and therefore we are not able to provide here an exhaustive picture of the different aspects involved in the issue of victimisation. We invite interested readers to consult complementary literature. The final section of this chapter called "suggested readings" can be a useful starting point.

1 What does it mean to be a victim of crime? Five angles

We can define "victim of crime" from different angles. **One angle** is the legislative approach. A person can be considered a victim of crime when he suffers a violation of the criminal law. This means that "who is a victim" will exclusively depend on every country's existent legislation. As can be imagined, in this approach the concept of "victimisation" will largely depend on cultural and historical changes. Certain acts of violence that are not considered criminal offences at a certain moment in time can become a priority and lead to legal reforms in another. For example, domestic violence started to be criminalised in the 1970s as a response to feminist social movements. This way, legal conceptions of crime cannot be considered independent of the social context in which they are created.

A **second angle** is the sociological one, that is, how members of society see a "victim". According to this approach, "being a victim" is a socially constructed concept. In societies in general, certain images and stereotypes about crime, offenders and victims exist. They can differ from society to society. Some offences might not be "criminalised" in the public opinion and the media, and this is changing in time. Legislation - normally - follows changing opinions in society. For example, the use of soft drugs or bicycle theft in certain groups is no longer perceived as a crime … A general stereotype regarding the victim is that of the "ideal victim" (as also exists the "ideal offender"). This means, that we tend to attach the label of "victims" only to those who, according to us, fulfil certain requirements or correspond to a certain image. For example, a victim is often seen as weak,

morally acceptable, blameless, has nothing to do with the unknown offender, the offender is bad and the victim has the perfect combination of power, influence and sympathy to claim the victim status. If the “victim” does not fulfil these requirements, we will not categorise that person as a victim and, therefore, we will not behave with him in a sympathetic way.

This approach explains why victims’ social environments not always react with compassion or sympathy. When the victim is not considered “innocent” or “good”, some family members, friends or acquaintances may react in a negative way, stigmatising or blaming the victim. Scholars have studied this phenomenon especially among cases of sexual violence, since stigmatising responses are often reactions to this type of crime. However, the same situation may also happen in cases of minor crimes. This would mean that different types of victims can be blamed by their communities. This may cause serious problems for victims and could hinder their recovery process.

Unfortunately, the existence of negative reactions towards victims that do not match with the image of the "ideal victim" is also a phenomenon that can be observed in the context of specialised services. Studies have shown how legal, medical and mental health services act differently with different victims depending on how close (or far) they are from the image of the "ideal victim". For example, victims of assaults by stranger offenders and victims of assaults that involved the use of a weapon tend to receive all the services they need (legal, medical and mental health services), but victims that do not follow this profile (for example, victims of known offenders and victims that had used alcohol at the moment of the assault), tend to have a more negative experience with these services. For most of these cases the legal investigation will not continue, and the reception of mental and physical health assistance will be uneven. In this sense services follow the general assumptions of a society.

The human-right **angle is the third** approach. The human-rights approach recognises that every human being is a person that holds rights. Under this approach, freedom, well-being and dignity are the main goals, which explain its focus on disadvantaged, discriminated or vulnerable people. Human rights are seen as universal, inherent to the human condition and their recognition imposes on all states specific obligations, in terms of respecting, protecting and fulfilling every right. Moving to victims of crime, we can easily see that a victim of crime has suffered a detriment in his experiences of freedom, well-being, and dignity; they become vulnerable citizens that are in a disadvantaged position. If the state has the obligation to protect its citizens, then it is also the responsibility of the state to react when citizens are harmed and left in this disadvantaged position. As we will see later, this approach has been the main framework to propose that victims have inalienable rights as they are, for example, included in the recently approved Directive 2012/29/EU on Victims’ rights by the European Union.

A **fourth angle** is the “psycho-social” one. This approach considers that a person is a victim when he or she has suffered a *wrong* that caused *harm*. Wrongful is defined in the Cambridge dictionary as “actions that are unfair or illegal”. Therefore, this concept refers mainly to perceived situations of injustice. In this definition is especially important the idea that such wrong is committed by a wrongdoer, that is, by another human being. This makes of criminal victimisation an experience that differs from other situations, such as natural disasters, because the experience of injustice usually comes from an interpersonal contact. This is the core of the psycho-social definition of

victimisation. In that sense, we cannot separate the damage caused by the offence from the person who caused the offence and from the experience of harm of the victim: the harm has its origin in the wrong as experienced. As we will see later, this definition has important consequences for the development of victim services.

We can still add a **fifth angle**. We can call this angle the criminological one. To explain this angle we need first to remember that the criminologists' interest in the "victim" started as a way to explain the origin of the crime. One clear example of this is the concept of "victim precipitation" proposed by Mendelsohn in the 1960s. In this initial conception, the victim often played a role, as so did the offender, in the initiation of the criminal offence. Currently, criminological approaches have evolved. They left behind the negative connotation that the "victim" had in the origins of victimology and have moved to study the phenomenon of victimisation as such. At present, victimologists have understood that there is no random distribution of persons becoming victims of crime. Victimisation figures tend to be concentrated in certain social groups and certain people that, for different reasons, can be more in risk of becoming a victim. At the same time, it has been repeatedly observed that the labels of "victim" and "offender" cannot only be interchangeable over time (for example, a child victim can become an offender later) but that they can also be attached to populations that share the same socio-demographic characteristics. In other words, victims and offenders often belong to the same community and, moreover, know each other.

We have described these five angles to exemplify that there is not a unique way to define, conceive and understand the notion of "victim of crime". The different approaches are oriented to specific aspects of the notion of victimisation and reflect different frameworks that, being complementary to each other, can offer different starting points to address the problem.

These angles may also help us to understand the assumptions that underpin certain strategies of victim policy. For example, we can see that social interpretations of "who can be considered a victim" can also imply differences in how legal definitions are conceived. For instance, the following quote[1] shows us how different "labels" can be applied to different victims of the same crime:

"In 1992 in Italy, in two separate incidents Italian magistrates Giovanni Falcone and Paolo Borsellino were assassinated by the Italian mafia through a car bomb. In both cases, all people in the car with the magistrates were killed as well as the police escort (following in separate cars). While all passengers in the magistrates' cars were treated as victims of mafia related crime, the police escort following in separated cars were treated as victims of terrorist attacks. And although all were victims of the same attack, the rights and support available differed based on the individual victim status."

Social definitions of "the victim" may also bring differences on how certain legal instruments are created and/or applied. A known example is state compensation. State compensation is a strategy used in several European countries to offer financial compensation for the harm caused by a criminal offence. Despite the good intentions behind this strategy, state compensation has been

[1] From INSIGHT, M., *Options paper - Study for an impact assessment on ways of improving the situation for victims,* London, Matrix Insight, 2010.

criticised for being a discriminatory tool, since victims must fulfil certain requirements in order to apply to this benefits. For example, victims should have experienced a violent crime, should have a certain nationality, and the crime should have been committed in a certain territory. In addition, the victim should not have provoked the offence, or she should have not committed a serious offence in the past. We may note thus that mainly 'ideal victims' are entitled to apply to state compensation in general.

The five angles mentioned above, may intertwine. Sociological evolution influences legislation. The special attention for psychological aspects of victimisation also has its influence. It has been observed that psychological definitions may become relevant enough to impact on legal definitions. In countries such as USA, Canada, England and Wales, the Netherlands, Ireland, New Zealand, Australia and South Africa, for example, the legal definition of "victim" tended to focus on the idea of *harm*, that is, the impact of the crime, more than on the victim's position in the legal process.

In the following sections, and based on the four cases we are focusing on in this handbook - Belgium, Ireland, Italy and Spain -, we describe and discuss the definition of the "victim" in the national legislation to move later to the analysis of international regulations. We will see how certain angles mentioned above have prevailed at both the national and international level.

2 Deepening the legislative angle

Comparing national legislation at the European level is a difficult task because there are big differences across countries in terms of how the victim is/has been understood. For example, not all jurisdictions have a legal definition of the concept of "victim", but instead other notions are used such as "injured party" or 'complainant". Some countries do not use the concept directly but have regulated the issue in different ways. These differences may have important implications; the lack of a common notion of "victim" at national level could hinder the application of international regulations, as it happened before with the 2001 EU Framework Decision on the standing of victims in criminal proceedings and as it may happen with the implementation of the new EU Directive 2012/29/EU.

Let us show some examples based on the four cases we are considering here.

The definition of the victim in the Spanish legislation

In the Spanish criminal process, the victim is considered a party *("sujeto procesal"*), as also are the prosecutor, the offender, the court, and the defendant lawyer. In the criminal code, the victim is defined as the one who has been "offended by the crime" (*"ofendido por el delito"*) and can present private accusation if desired. In Spanish legislation the inclusion of the notion of "victim" is recent and mirrors recent developments in this area.

The definition of the victim in the Belgian legislation

In Belgium, the crime victim can be defined as the "harmed person" (art. 5 bis Preliminary Title Code of Criminal Procedure - CCP) or the "civil party" (art. 63 CCP). A harmed person is the one who declares to have suffered damage as a consequence of an offence. The "harmed person" status can be obtained by a declaration at the prosecutor's office. The status of "civil party", instead, can be

obtained if the person declares it explicitly before a judge and if he officially asks for compensation. The notion of "harmed person" is not considered being part in the criminal proceedings, but the "civil party" is.

The definition of the victim in the Italian legislation

Italy uses the term "person harmed by the offence" ("*persona offesa dal reato"*) and "damaged party" (*"danneggiato dal reato"*), being the latter term closer to a civil party. Currently, one of the most important challenges in Italy is the recognition of the victim status. This is important because without this recognition, victims do not have access to certain benefits. The Italian legal system has had a huge deficit in respect to victims of crime. Unlike some other countries, however, in Italy the state now grants the victim an important role in the criminal proceedings, since they can stand as a civil party. However, this right is not universal but remains limited to certain groups of victims (for example, victims of stalking and terrorism or mafia).

The definition of the victim in the Irish legislation

As a common law country, the victim is only considered a witness, so she cannot act as a party in criminal proceedings. Ireland is nevertheless actively pursuing a policy of giving victims a central place in the criminal justice environment, and the position of victims is continually under review. In criminal cases, the Director of Public Prosecutions (DPP) prosecutes cases on behalf of the people of Ireland, not on behalf of any one individual (the victim).

When the notion of victim of crime is explicitly defined in domestic legislation, it tends to involve the following aspects: in general, the victim of crime is a natural person who is a citizen of the respective member state or is at least an EU citizen. This person should have sustained damage (even though the definition of "damage" may vary), and that damage should have been caused by a crime.

International instruments and regulations have mainly used psycho-social and rights-based definitions of victimisation. In the following paragraphs we present the definitions of "victim of crime" in the most important international and European instruments.

United Nation's Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)

"Victim means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability".

The United Nation Declaration of 1985 was a pivotal moment in the context of the changes that in that period were taking place in terms of the visualisation of victims' rights. The importance of this Declaration resides in the following issues:

- It highlights not only the evident consequences of the crime, but also the psychological and social aspects of victimisation.
- For the very first time, the declaration contextualises the harm caused as a result of a criminal offence in the framework of violation of rights and, therefore, as a state that can be applicable to every human being, without exception.
- It emphasises the irrelevance of both the relationship between victim and offender and the result of the investigation process in order to recognise a victim as such.
- Finally, the declaration assumes victimisation in a wider sense. People affected indirectly by the harm (such as family members or first responders) can also be considered victims of crime.

The extent to which such definition has been taken into account can be observed, for example, in the way that both physical and mental injury has been taken into account when seeking redress, or that domestic legislations consider the direct victim's significant others as possible victims of crime as well. Because the Declaration applies even when there has not been determination of guilt of the offender, its guidelines are relevant to civil and informal proceedings as well, e.g. strategies of state compensation (with no offender apprehended).

At the European level, three important instruments have to be mentioned: the EU Council Framework Decision of 2001, the Council of Europe Recommendation of 2006 on assistance to crime victims, and the EU Directive 2012/29/EU of 2012 establishing minimum standards on the rights, support and protection of victims of crimes.

The EU Framework Decision of 15 March 2001 on the standing of victims in criminal procedures defines "victims" as follows:
"Victim shall mean a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State."

In 2001, the Framework Decision adopted a definition of "victim" that recognised not only the physical consequences of the crime but also the psychological ones. However, it finally restricts the definition of "victim" to the domestic legislation of every member state.

Council of Europe Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims:
"Victim means a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, caused by acts or omissions that are in violation of the criminal law of a member state. The term also includes, where appropriate, the immediate family or dependants of the direct victim."

Here, the Council of Europe added to their former definition of victim the idea of indirect victims, that is, the possibility that other people, in addition to the direct victim, could be harmed by the offence.

In October 2012, the EU Directive 2012/29/EU on minimum standards on the rights, support and protection of victims of crime was approved. This Directive imposes mandatory measures that all EU member states have to implement in order to better respond to the needs of victims of crime.

Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime:

"Crime is a wrong against society as well as a violation of the individual rights of the victims. As such, victims of crime should be recognized and treated in a respectful, sensitive and professional manner without discrimination of any kind."

"A person should be considered to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them. It also considers family members".

"Victim means i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence, ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death." (Art. 2)

In relation to former definitions, the definition of "victim" offered by the new Directive contains important elements to point out. These are:

- It values psychological harm as well as physical and material harm.
- Services oriented to meet victims' needs are seen as inalienable rights, since crime is a violation of the individual right of the victim.
- It considers, as the United Nation Declaration, the irrelevance of factors such as the result of the investigation process and the relationship with the offender to consider a victim as such.
- It includes indirect victims as potential injured persons.

The fact that victims can be considered as such without the offender being apprehended is an important issue. This way, some contradictory situations as the following example can be avoided: "One young person died in an attempt of preventing robbery. While he was awarded a post-mortem gold merit for his courage, his family did not receive any compensation because the attackers were not identified and therefore he did not qualify as a 'proper' victim of crime".[2]

[2] *Ibid.*

3 Consequences of crime for victims

After a long time being "the forgotten party" of the criminal procedure, the last decades have witnessed an increasing concern for victims of crime. Scholars attribute this change to different factors: World War II contributed to a bigger interest into the emotional breakdown due to combat; the social and feminist movements developed in the 1970s increased interest in those people suffering special violence situations, such as women and children. In this period, there was also an important worldwide turn into civil rights. In terms of research, victimisation surveys appeared as a good strategy to know better the situation of victims: even though the final objective of these surveys was to have a better measure of the crime rates, victimisation surveys helped to realise the extent of underreported crime, the type of situations that victims tended to experience the most and the elements that characterised the victims of specific types of crimes.

The concern for victims of crime has taken two main perspectives: the needs-oriented perspective (mainly developed in Europe) and the rights-oriented perspective (initially mainly developed in the US). In the following section, we do first describe consequences of victimisation from a needs-oriented perspective. Later, we discuss its differences with a rights-oriented perspective.

To understand the needs of a victim we first have to reflect on the consequences of criminal victimisation. This is a not so easy task, primarily, because there is no unique way in which victims may react to their victimisation experience. Reactions may vary in terms of intensity, duration, and ways of expression. Some victims may feel affected immediately after the occurrence of a crime, others days or weeks later. Two victims that have suffered the same offence may experience their needs in very different ways. Scientific studies have observed the following facts, which seem to be important aspects to keep in mind:

- Not all victims of crime will experience what we usually call "trauma". On the contrary, many victims will develop a resilient response to crime.
- Consequences to victimisation may affect certain aspects of the victims' life, while other domains may not experience any harm. In other words, well-being and damage can coexist.
- Victims may respond showing signs of trauma but they also may react in resilient way. Especially in the latter case, professional help will not be always needed. Most recovery happens spontaneously.
- The extent to which a victim will gain psychological and emotional recovery will depend on several factors and not only on personal characteristics. This makes it difficult to speculate about the needs of specific victims and about the recovery process that the victim will follow.
- Suffering emotional, psychological or moral harm as a consequence of the crime is not an exclusive effect of the called "serious crimes". Victims of minor crimes may also feel importantly affected by the experience.

The big variation among different victims in terms of their responses to victimisation and trauma makes the victimisation experience difficult to generalise. In the following paragraph we try, however, to construct a list with some of the most common effects that can be observed. This list is neither exhaustive nor detailed, but it may help us to get an idea of what victims go through:

Financial damage. This can be especially evident in cases of burglary or theft. However, other crimes can also cause more indirect financial damage A person may lose his work, for example, if a specific ability, essential to perform his job, is reduced as a consequence of the crime (e.g. temporal or permanent incapacity), or when the victim has to follow expensive treatments. Moving out because one is no longer willing to live in the same house or environment or costs for therapy constitute other examples of indirect financial damages that can be identified as consequences of crimes. In addition to financial damages, victims may also experience material damage, such as the waste of time involved in court procedures.

Physical injuries. They may vary from transitory until deadly injuries. Usually these are the most evident consequences of the crime. Sometimes, health consequences can also be produced as an indirect effect of the victimisation. For example, a victim of crime may develop psychological reactions that can lead to a self-destructive behaviour and therefore to experience accidents or other risky situations (high consumption of alcohol, for example).

Psychological effects. Studies on victimisation have also described that victims tend to experience certain negative emotions such as anger, self-blame and fear. Even when the apparition of these feelings is normal, the long-term persistence of them has proved to be detrimental for the victims' health. Perhaps the most common psychological effect mentioned is the posttraumatic stress disorder. Posttraumatic stress disorder (PTSD), by definition, occurs as a consequence of a traumatic situation which is re-experienced but, at the same time, actively avoided. The individual presents, in addition, persistent hyperarousal symptoms, such as sleeping problems or feeling as being constantly "on guard". Such effects must last for more than one month and be important enough to cause difficulties in the individual's life to be called PTSD.

Social effects. In addition to the effects already mentioned, victims may also experience changes in their social life. These effects may go in two directions. On the one hand (and because the victimisation experience was caused by another human being), some victims may see affected their sense of trust in others. In the victim's eyes, people may become a source of danger and damage instead of support, which implies a change of the victim's perceptions of society as a whole. For example, a victim physically attacked by a colleague at work, may have a hard time to feel comfortable with other colleagues in future jobs. This aspect of the victimisation experience has been described as victims' altered conceptions of community and society. His usual basic belief that others are "good, kind, helpful and caring" is challenged when one is becoming a victim of a crime. On the other hand, victims may tend to decrease their social life importantly. If victims are experiencing shame, or feelings of inferiority, or they just want to evade thinking of the incident, they may want to avoid having contact with others.

4 The recovering process

As announced before, to predict the course that a victim will follow after experiencing a crime is a difficult task. There are several factors that influence this process.

Individual characteristics. There are certain individual characteristics that have an important influence on how the recovery process will be. One of them is age. The younger the victim, the more damage can be experienced (especially in a long term). Gender may be important as well, because gender may influence the way that a person reacts to his/her victimisation. For example, female victims may tend to search for help and discuss what has happened with their direct environment, while some male victims may prefer to avoid facing the consequences of the offence. Finally, victims who have had previous experiences of victimisation may be more in risk to suffer more negative consequences.

Identity: "Am I a victim?" How the victim sees herself is a relevant issue in the process of restoration. The victim can either identify the situation experienced as a wrongdoing or not. This is a relevant aspect because of two main elements. Only those who identify themselves as victims will denounce the case to the police or will search for specialised assistance. Next to this, seeing him/herself as a victim is the first step to initiate the recovery process, because the term "victim" emphasises not to be responsible in the origin of the offence. It has been argued, however, that the victim's status is a dynamic process: victims are expected to evolve from this position to a more empowered attitude, called sometimes "the survivor status". This way, when the victim status would allow victims to recognise the harm suffered, the survivor status would allow the victim to find and develop the needed resources to get over the situation.

Type of offence and the relationship with the offender. Frequency, severity and duration of the event as well as degree of physical violence and the level of terror and humiliation experienced by the victim have appeared to be important factors in the recovery process. However, it is difficult to establish a direct one-by-one relationship between type of crime and effects of the victimisation. On the one hand, because devastating consequences can also be experienced by victims of "minor crimes", on the other hand, because we cannot separate the "type of crime" from the "relationship with the offender". For example, there are specific types of crimes that are most probably committed by strangers (such as burglary), while others tend to be committed by known individuals (for example, sexual violence). As a consequence, we cannot simply conclude that certain types of crime are related to certain types of effects: the effects might be conditioned also by the relationship that the victim had with the offender.

Social vulnerability. Victims who belong to marginalised communities or belong to certain ethnic minorities may have more difficulties to face the victimisation experience, mainly because of their own marginalisation. These victims will not have the same access to services than other victims, for example. In addition, their social characteristics make it less obvious that the rest of society indicates them as "victims", for which they can be specially exposed to experience negative social reactions.

Social support. Scientific evidence has shown that situations of stress are better and more successfully faced when we count on the support of our direct environment, family members, friends, colleagues and so on. This is also valid for victims of crime. Victims have half of their recovery ensured when they can count on positive social support. Unfortunately, this does not happen always. Sometimes victims can experience stigmatising or blaming social reactions. Negative reactions may be experienced not only by victims of serious crimes (such as rape) but also

by victims of minor crimes. This can happen, more importantly, not only in relation to their informal social networks but also in their contacts with the police or with specialised organisms or justice agencies after the notification to the police. The harm caused by negative social reactions or by an inadequate reaction to the victim is called "secondary victimisation". At the heart of the "secondary victimisation" lies, thus, a social responsibility that requires also social measures.

The contact with the criminal justice system. One of the most important sources of secondary victimisation is, without any doubt, the criminal justice system. Research has shown that victims who have been involved in litigation procedures may increase symptoms of post-traumatic stress disorder. What remains unclear, however, is what specific aspect of the criminal procedure affects victims negatively. Some have argued that the criminal justice process, because of its (usually) long duration, acts as a constant reminder of the offence. Others emphasise how the criminal procedure contributes to increase victims' harm by offering little recognition of the victim status and providing little space for participation and to voice his opinion. This second argument seems to be very valuable. In a traditional procedure, victims are usually treated with scepticism and are obliged to follow strict legal rules whose underlying logic is difficult to understand for them. Moreover, the criminal procedure polarises the conflict: victims and offenders are seen as individuals that belong to two completely separate social realities and whose interests are opposed to each other. However, this perspective may be an artificial construction of reality since, as we have seen previously in this chapter, victim and offender may know each other often very well or may belong to the same community.

5 Victims' needs

Victims' experiences are diverse and unique, which makes it difficult to design and implement strategies of intervention and/or victim policies oriented to help a large group of victims. For this reason, it is not surprising that efforts have been made to identify common needs among victims of crime in order to operationalise the objectives of the intervention and evaluate the effectiveness of services offered to them.

Simplifying what has been written in both the academic and the policy-making field, we can enlist victims' needs in the following way.

Need of a fair treatment. Victims need to have access to fair processes that lead to fair results. A fair process is the one in which victims feel they have had a say, and therefore a degree of control. This approach has been called "procedural justice" and emphasises that people tend to believe in the authority's unbiased decision when they have had a degree of participation or control during the procedure. From a more concrete point of view, this means that victims will find fair those criminal procedures in which they are aware of their rights, are aware how to exercise such rights and, moreover, are able to understand what is happening to their cases.

Need of recognition. Victims need that their victim status is recognised not only by their direct environment but also by the judicial authorities and the professionals they get in contact with. Such recognition implies on the one hand that victims are treated with respect and dignity by the

authorities and on the other hand that judicial procedures can be adapted to their needs, that is, that they are less formal and they offer room to victims' views and opinions.

Need of security and protection. Victims need to feel safe not only from the specific offender that has harmed them but from other potential offenders as well. Being safe means therefore feeling out of risk of retaliation and further victimisation, not only immediately after the commission of an offence but also during the possible criminal proceedings.

Support. Victims need the support of their direct environment, as well as the support of other organisms that can provide assistance both in a short and long term. The support needed can be emotional, financial and practical.

Material restoration. Victims need to be materially compensated for immediate damage as well as longer-term costs. Importantly, victims tend to prefer to be compensated by the offender instead of by the state, even when the offender can offer modest compensation. This shows the symbolic meaning usually involved in the need of compensation. However, asking for a substantial sum of financial compensation can stay a valid victim's request. In this case, each country's legislation will have to define its suitability.

Emotional restoration. Victims need to have access to emotional restoration through actions that can be taken by both society and the offender. The important aspect here is that the victim perceives that society is doing what is needed in order to prevent further crimes and that the offender becomes aware of the consequences of his act and is able to reconsider his own behaviour for the future. Some studies have linked emotional restoration to offenders' apology, but other suggest that an explicit offer of apology is not the only way in which recognition can be expressed.

Involvement and participation. Victims feel a need to participate in the process of their judicial case in varying degrees. There are different forms of participation that may have different type of effects on victims. A basic and minimum way of participation is getting information, not only about what is going on with their case but also about the services that are available for them. Other forms of participation aim to involve the victim in decision making, such as victim impact statements and victim-offender mediation. The high acceptance and degree of satisfaction with the latter form has indicated that a more active form of participation is highly valuable for many victims of crime. It is important to clarify, however, that victims do not necessarily want to replace the judge and make the final decision concerning their offenders. On the contrary, that is seen as an overwhelming responsibility. Victims in general accept that judicial authorities have a specific role that cannot be replaced.

The needs enlisted here do not need to be perceived and expressed by all victims. As said before, victims may differ importantly in what needs they consider more important. For example, some victims may focus especially on their need for compensation, while others may do so on emotional restoration. What is important to highlight here is that there are no "good" or "bad" needs and therefore victims who prefer financial compensation cannot be seen as "bad" victims. All needs are valuable and relevant and meeting them is important for victims of crime.

As the reader may note, the "need for punishment" (in the sense of inflicting pain to the offender) has not been included in the list. This is in part due to the fact that several studies have demonstrated in different countries in the world that this is not a prevalent need among victims of crime. On the contrary, victims tend to prefer, sometimes even more often than the general population, alternative sanctions instead of prison, such as community work. This does not mean, however, that victims cannot feel the need of punishment. Some certainly do and justice actors must recognise and value such a need.

Finally, we cannot forget that most of studies carried out in the field of victims' needs have been done in the context of victims who are in contact with the criminal or social system (who have notified the case to the police or who belong to victims organisations). So we should keep in mind that we still do not know too much about the needs of those victims that remain outside. That is still a big interrogation mark for academics, practitioners and policy makers.

6 Needs or rights? Legislative developments in relation to victims

As we will see in this section, legislative regulations at a national and international level have translated needs into rights, as a way to avoid discretional responses by the states or services. When translated into rights, needs are not seen any more as "what the victim is lacking to get recovered", but instead, as indisputable rights that must be fulfilled by the state or society. In addition, while the needs-approach emphasises a victim in need of a caring social response, the rights-approach gives to victims of crime the position of active citizens that can, as any other citizen, exercise their rights.

But, is the rights-approach useful, adequate or necessary? Given the facts that victims' needs may vary from victim to victim, a rights-perspective seems to be important in order to make the application of standards possible, at both national and international level. But concentrating on the rights-perspective is only one part of the story. Creating a long list of rights might be counterproductive in a long term: holding the victim with innumerable rights may create too high and unrealistic expectations and may emphasise excessively the victim's position as *opposite* to the offender. For this reason, it has been argued that the rights-approach can be *used* but not *abused*. Rights can be considered as a reference in a larger perspective of the right balances and redress for both victim and offender.

What rights are we talking about? A useful classification of rights is the one that distinguish between substantive rights, procedural rights and rights to services:

- Substantive rights. This would include the victim's right to take action, especially in terms of compensation and legal aid or representation.

- Procedural rights. This right refers to provide evidence and to take part in the criminal proceedings, by receiving relevant information, appealing acts, restorative justice and victim impact statements.

– Right to services. This right refers to the equal access of victim support or specialised services oriented to help the victim dealing with the consequences of the offence.

On the following pages we will discuss legal regulations or instruments and analyse how victims' needs and rights are treated at the international and national levels.

6.1 Developments at national level

The state of affairs of victim policies in EU member states varies importantly from country to country. However, European studies have found some commonalities. For example, with few exceptions, all member states grant the victim the legal right to take action, especially in terms of claiming compensation from the offender. Victims usually have several procedural rights as well. They can take part of criminal proceedings, e.g. by providing information, appealing against certain decisions, or submitting victim impact statements (the latter especially in Ireland, UK and the Netherlands). In addition, all member states have specific victim-related legislation, mainly with respect to victims' protection, victim support and state compensation.

However, the four cases we are considering here (Belgium, Ireland, Italy and Spain) show us that these general provisions may imply quite important differences in practice. Let us to review these four countries in more detail.

Belgium

In Belgium, the position of the victim has been under discussion since the 1980s. New initiatives brought about a real victims movement in the 1990s. Since then several new regulations appeared and various authorities at the federal and regional state level became responsible for different victims issues such as financial aid, but they mainly focused on victim assistance and the prevention of secondary victimisation. During the 1990s, a whole series of services has been created to respond to victims' needs at three main levels: within the police, at the prosecutor's level and within social services. Other procedural rights have been regulated as well, including the position of the victim within the procedure of conditional release. The origins of restorative justice initiatives in the field of serious crimes were also strongly influenced by the necessity to respond to victims' needs. Currently, Belgium counts on a strong network of victim assistance and compensation schemes.

Ireland

In Ireland, one of the first initiatives regarding victims of crimes was the Criminal Injuries Compensation Tribunal, established in 1974. Later, in 1990, a Victims' Charter was drawn up by the Department of Justice. This document informs victims in a simple language about the criminal procedure and about their rights in it. This initiative has been criticised for being a merely source of information, without imposing binding obligations.

The next change had to wait until 2005, four years after the 2001 EU Framework Decision. Then a Commission for the Support of Victims of Crime was established by the Minister for Justice, Equality and Law Reform. Its main aims were to devise an appropriate support framework for victims of crime and to disburse funding for victim support and assistance measures.

In 2008, the Justice for Victims Initiative was announced. This initiative proposed legislative changes, in particular, related to victims' procedural rights. For example, it gave a statutory right to

make a statement to family members in homicide cases or in cases where the victim is incapacitated as a result of a crime or where the victim is a child or is unable to make a statement due to a mental disorder.
In addition to these legislative proposals, a number of administrative changes to increase the level of support to victims of crime were suggested, including the establishment of a new executive office at the Department of Justice to support crime victims, a reconstituted Commission for the Support of Victims of Crime with an expanded role and the creation of a Victims of Crime Consultative Forum, representing victims' interests, which will liaise with the Commission.
In conclusion, efforts to improve the situation of the victim in Ireland have been mainly focused on compensation schemes and increasing of procedural rights. As we will see in the following chapter, initiatives in terms of victim support have also been implemented. However, they have proved to be insufficient to offer equal access to all victims of crime.

Italy

With the exception of specific laws that focus on compensation for particular groups of victims (such as victims of terrorism), Italy has been lacking the development of an integrative victim policy. This situation is also mirrored by the lack of victim support services across the country.

Spain

In Spain certain groups have been prioritised, especially from the point of view of financial compensation and other complementary measures. These groups are domestic violence victims, minors in the context of family violence, victims of juvenile violence, victims of terrorism, and victims of traffic accidents. Apart from the social and psychological assistance, the right to free legal aid has not yet been recognised. Some specific regulations are the following:
Criminal Procedure Act: Police and judges have the obligation to inform victims about possibilities to exercise criminal and civil actions in the criminal proceedings. This act does not establish the legal obligation to inform victims on victim assistance.
Justice Citizens' Charter: The Charter was approved by the parliament on 16th April 2002. This document has a double role: first, to develop a modern and open justice administration, responsive to citizens' questions and complaints, second, to protect vulnerable citizens such as victims of domestic violence, handicapped citizens and immigrants. This letter offers a base on which citizens can claim their rights. The letter states that the person who is victim of a crime has the right to be informed about his role in the criminal proceedings and the possibilities of reparation.
Witnesses and Experts' Protection in Criminal Cases Act of 1994: Judges can adopt protective measures for victims of crimes.
Comprehensive Protection Measures against Gender Violence Act (2004). This act is applicable in all Spain and reflects the growing interest in the recognition of the rights of victims of gender-based violence. The act involves the right to assistance and establishes special protective measures for this group of victims.

6.2 Developments at international level

At the international level, several instruments have been adopted in relation to victims' needs and rights. Here we have a list of the most important ones:

United Nations
Declaration of Basic principles of Justice for Victims of Crime and Abuse of Power, 1985
Council of Europe
Resolution 77(27) of September 1977 on the Compensation of Victims of Crime
European Convention on the Compensation of Victims of Violent Crimes of 1983
Recommendation R85(11) of June 1985 on the Position of the Victim in the Framework of Criminal Law and Procedure
Recommendation Rec(87)21 of September 1987 on Assistance to Victims and the Prevention of Victimisation
Recommendation Rec(2006)8 of June 2006 on Assistance to Crime Victims.
European Union
Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Procedures (2001/220/JHA)
Framework Decision of the 13 June 2002 on Combating Terrorism (2002/475/JHA)
Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings
Framework Decision of 22 December 2003 on Combating the Sexual Exploitation of Children and Child Pornography (2004/68/JHA)
Directive of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime (2012/29/EU).

In the next paragraphs, we will concentrate on the last provision, the Directive 2012/29/EU, given its current relevance.

The Directive 2012/29/EU establishes a list of rights of victims of crime. It also provides guidelines for victim assistance and in particularly to victim support as important means to meet victims' rights. In sum, the Directive provides minimum standards that member states are obliged to fulfilled in terms of victims' services before the end of 2015.

The rights considered in the Directive include the following:

Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime (2012/29/EU).
Provision of information and support
Right to understand and to be understood. This should happen from the first contact with judicial authorities and during "any further interaction" with the competent authority in the context of criminal proceedings. This includes accessible language, and communication that takes into account the personal characteristics of the victim. Member states should allow that victims can attend the first contact accompanied by a person as a way to get assistance in understanding and getting understood.
Right to receive information from the first contact with a competent authority. Victims should receive information concerning, among other things, the type of support they can obtain, the procedure to make complaints, ways to obtain protection, how they can access legal advice and compensation, and restorative justice services.
Right of victims when making a complaint. Victims shall receive a written acknowledgment of their

formal complaint.

Right to receive information about their case. Victims should receive information without unnecessary delay information: a) any decision not to proceed with or to end an investigation or not to prosecute the offender; b) the time and place of the trial and nature of the charges against the offender. Victims should also receive the following information: the final judgment in a trial, information enabling the victim to know about the state of the criminal proceedings.

Right to interpretation and translation.

Right to access victim support services. Member states shall ensure that victims, in accordance with their needs have access to confidential victim support services, free of charge, acting in the interest of the victims, before, during and for an appropriate time after criminal proceedings. This access is not dependant on victim making a formal complaint.

Participation in the criminal proceedings

Right to be heard. Member states must ensure that victims may be heard during criminal proceedings and may provide evidence. The procedural rules shall be determined by national law.

Rights in the event of a decision not to prosecute. Victims should have the right to review a decision not to prosecute.

Right to safeguards in the context of restorative justice (RJ) services. In the context of RJ services, measures have to be taken in order to prevent any form of secondary victimisation as well as intimidation and retaliation. Victims who choose to participate in RJ processes must have access to safe and competent RJ services. Conditions are: a) RJ services are used only if they are in the interest of the victim, subject to any safety considerations and based on victims' free and informed consent; b) The victim should be informed about the process and potential outcomes of the RJ process and about the procedures for supervising the implementation of any agreement; c) The offender has acknowledged the basic facts of the case; d) Any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings; e) Discussions in RJ processes that are not conducted in public are confidential. Finally, member states shall facilitate the referral of cases, as appropriate to RJ services, including through the establishment of procedures or guidelines on the conditions of such referral.

Right to legal aid, when victims have the status of parties to criminal proceedings.

Right to reimbursement of expenses.

Right to the return of property.

Right to decision on compensation from the offender in the course of criminal proceedings.

Rights of victims resident in another member state.

Protection of victims and recognition of victims with specific protection needs

Right to protection from secondary and repeat victimisation and from retaliation, including the risk of emotional or psychological harm.

Right to avoid contact between victim and offender.

Right to protection of victims during criminal investigations, including interview of victims without unnecessary delay, number of interviews (and medical examinations) to be kept to a minimum, victims may be accompanied by their legal representative or a person of their choice.

Right to protection of privacy (referring to the media).

Individual assessment of victims to identify specific protection needs.

Right to protection of victims with specific protection needs during criminal proceedings.
Right to protection of child victims during criminal proceedings.

Unfortunately, the existence of international instruments does not guarantee that the rights of victims of crime are fully protected. In 2009, a study done by APAV (Portugal) and INTERVICT (the Netherlands) that aimed at studying the extent to which member states had applied the 2001 Framework Decision, showed an adverse picture. Experts, interviewed in all European countries, concluded that the role of the victim in the criminal procedure was not being sufficiently recognised. In terms of participation, even though most countries had argued to have implemented channels of participation, it remained unclear what kind of participation had been encouraged. The situation was also disturbing with regard to information: this remained unreachable for most victims of crime.

7 Vulnerable victims

A recurrent topic in the field of victim policies and victim assistance is the concept of vulnerable victim. What does this notion entail and who can be considered a "vulnerable victim"?

Even though there is not always a definition of vulnerability as such, we could define vulnerable victims as those that can be in risk of suffering serious (emotional or physical) damage, or are in risk of repeated victimisation. They can also be considered vulnerable due to the problems they face in coping with their victimisation and/or their limited access to justice. Traditionally, certain categories of victims have been identified as vulnerable. According to the Directive 2012/29/EU, victims may be particularly vulnerable or can find themselves in situations that expose them to a particular risk of harm: " … such as persons subjected to repeat violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crime in a member state of which they are not nationals or residents, should be provided with specialist support and legal protection". The specific groups recognised by the Directive 2012/29/EU are children, people with disabilities, victims of terrorism, and gender-based violence victims.

Why should we use the concept of vulnerable victim? For policy makers, it is important that vulnerable victims are identified, that is, to develop a definition of vulnerable victim, to identify groups of vulnerable victims, and to assess victim vulnerability based on personal characteristics and type of crime committed. The rationale behind is that vulnerable victims may have needs that differ from the ones of other victims. Identifying vulnerable victims allows more targeted and cost-effective measures.

However, the concept of vulnerability is not free of controversy. For example, if we accept that two victims of the same crime (traditionally considered as "risky") may experience it in a very different way (e.g. one showing stress and the other one showing empowerment), can we still attach the label of vulnerable victims to both? Secondly, type of crimes and individual characteristics may not be the only useful indicators of vulnerability. For example, in certain countries, socio-economic factors may play an important role in "producing" vulnerable victims. Thirdly, the label of vulnerable victims may impede the identification of victims' resilient aspects. As studies have shown, a victim who has learned to cope successfully with the consequences of victimisation will

run less risk of experiencing a new crime in the future. Finally the concept of vulnerable victim may pre-judge victim's capacity to get involved in alternatives and participative approaches to justice, as restorative justice.

Despite these controversies, The European tendency has been to develop special regulations for certain groups of vulnerable victims, especially minors and juveniles, victims of sexual crimes, and victims of domestic violence and human trafficking. Most provisions have been focused on protecting these victims of certain criminal procedures, such as the questioning in a trial. In the specific cases of Belgium and Ireland, perpetrators of domestic violence can be denied the access to the victims' house. Spain has introduced the general category of "victims of gender-based violence" that proclaims these victims to be especially vulnerable and endows them with a number of rights, such as integral social assistance, psychological attention, social help, economic aid, labour integration, and access to free legal assistance. This Spanish focalisation on this group of victims has taken place after the emergence of the Justice Citizen's Charter, which shows the importance of this matter in Spanish victim policies.

8 Working with victims: principles of intervention

Working with victims of crime requires not only knowing about victims and victimisation but also developing a certain attitude based on certain principles at both individual and institutional level.

8.1 First principle: To believe in the relevance of victims' involvement

In a recent research carried out in the context of a European project it was observed that practitioners who have contact with victims on a regular, but not exclusive basis, sometimes need to be reminded of fundamental victims' needs and the importance of victim involvement. In particular practitioners within the police and the criminal justice system may find it difficult to give sufficient attention to the victim's needs when confronted with other duties and priorities in daily work. Legal requirements of criminal investigation combined with a high caseload and time pressure often result in a practice of *conditional* (instead of unconditional) victim support, i.e. giving attention to the victim only if time allows, or only after all other priorities are met.

It might be good to remind us of the reasons why we should pay that much attention to victims of crime. The following might offer some answers.

Because this is an important problem in numeric terms. European studies have estimated that in 2007, for example, 29.2 million people across Europe reported a crime. If we add to this the unreported crimes, it means that around 59.2 million people became a victim of crime that year. But crime may also affect indirect victims, so adding this group indicates that during 2007, the impact of crime affected that year 207.3 million of people only at the victim side.

Because meeting victims' needs implies both individual and social benefits. When a society is able to respond to criminal victimisation in the line of meeting victims' needs, it will contribute not only to increase the victim's individual level of well-being. By doing so society is helping itself by preventing other costs that the impact of victimisation may have in the long run. For example, we may reduce social costs associated with long-term psychological effects (e.g. use of social services,

decrease of the victim's work capacity) or prevent the commission of new crimes (e.g. a victim who learns how to cope with his victimisation may develop resources to avoid new victimisation in the future).

Because meeting victims' needs will increase social trust in judicial institutions. Research revealed that victims who feel supported tend to trust judicial institutions and authorities much more than victims who do not feel recognised. This, in turn, may increase the number of cases reported and victims' willingness to collaborate in the criminal procedure. As a consequence, victim's social environment may also see reduced their sense of insecurity and fear.

Because meeting victims' needs is a social responsibility. From a human rights approach, state and society in general have the obligation to respond to victimisation in an effective way. Firstly, because the notion of justice cannot solely consider the offender and the social, public dimension of crime. Victims are the directly injured party and this imposes an unavoidable social responsibility. Secondly, because victims of crime have suffered a violation of their rights that needs to be addressed.

We believe that we must keep all these reasons in mind when we develop victims policies and practices. To focus on merely one or two (for example, the efficiency of the criminal justice system) may increase the instrumental use of victims and therefore produce precisely what we want to avoid: a higher victims' vulnerability and experiences of secondary victimisation.

8.2 Second principle: To think outside the box

Every victim of crime is different. Every victim may have specific needs that certain policies, usually designed to support a big number of victims, are not able to meet. For example, recent research in the Netherlands has shown how different instruments of victim participation seem to be chosen by different types of victims. For this reason, we believe that a response to victimisation should offer a variety of options that may be oriented to meet different types of needs, such as victim support services and restorative justice alternatives. Victims may want to be treated as people in need, and to become clients of services offered by the state. But victims may also want to have a more active participation in the decision making process. At the same time, several victims may not be "ideal victims" as discussed above, but that should not prevent social and judicial services of offering the assistance that victims require. In other words, most victims are in reality not as we imagine them to be in theory, so we need to adapt our services and to re-structure our mind in this direction.

8.3 Third principle: Cooperation and collaboration

The existence of multi-faced consequences of criminal victimisation and the many contacts victims may have with different institutions and agencies in society, require a well coordinated, coherent and integrated approach. This means the necessary collaboration between different sectors and between different strategies of intervention. Hence the importance of setting-up and gradually developing effective cooperation between different agencies at the local level. This must make timely and informed referrals of victims to the most adequate service possible, and it will provide opportunities to work in a coordinated way on certain issues.

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Chapter 2: Victim assistance as victim support

Introduction

In the previous chapter we have discussed the needs of victims of crime, and we have seen that the diversity of these needs makes it difficult to promote just one model of the most helpful interventions for victims. However, in order to make victim policies and social intervention more effective, some general needs have been identified and described in the literature. We have also seen that European regulations have translated these needs into rights in order to ensure minimum standards of quality for victims' services. Finally, we have discussed the relevance of offering different types of services to victims of crime in order to respond successfully to the different types of needs or interests they may present.

This chapter focuses on victim assistance as one of the possible responses to criminal victimisation. In particular, we focus on victim support as one specific strategy that the state or the community may implement for victims of crime. Our objective is to offer a general overview of what victim assistance and victim support may entail. We will use examples mainly coming from the four countries of reference (Belgium, Ireland, Italy and Spain).

1 Defining victim assistance and victim support

1.1 What is victim assistance?

The 2001 EU Framework Decision stated that "each member state shall, in the context of the proceedings, promote the involvement of victim support systems responsible for organising the initial reception of victims and for victims support and assistance thereafter, whether through the provision of specially trained personnel within its public services or through the recognition and funding of victim support organisations". Five years later, Council of Europe Recommendation Rec (2006)8 on assistance to victims of crime defined victim assistance as all the measures that can be undertaken in order to alleviate and decrease the negative effects of crime, including the prevention of secondary victimisation. Assistance should aim at different aspects of the victimisation experience and therefore include different types of services: medical care, material support, psychological health, social care and counselling. These services should be provided free of charge. Recommendation Rec (2006)8 also gives a special place to vulnerable victims. They should benefit from special measures especially adapted to their situation.

Victim assistance then refers to different measures that can be implemented from different agents, related directly or indirectly to the criminal procedure. For example, the police, usually being the first organism the victim takes contact with, is in a privileged position to offer a first support, to orient and eventually to refer cases to specialised services. In Belgium, for instance, victim assistance is one of the six fundamental tasks of police officers, and every local police service counts one victim assistance unit or at least one specialised staff member to support the implementation of victim assistance throughout the whole police organisation. It means that victim assistance should not be reserved to social workers or to a social department within the police service, but that it is the duty of every police officer who has contact with victims: he/she should be

able to show respect and recognition to victims, to listen actively to their stories, to offer them practical help where needed, to provide precise information on the judicial procedure and legal assistance, and to refer the person pro-actively to other agencies when appropriate.

As mentioned before, the scope of victim assistance is broad. For this reason we will focus this chapter on a specific type of victim assistance known as “victim support”.

1.2 What is victim support?

Victim support (thereafter VS) is a specific way of victim assistance that has grown importantly in the last decades. VS usually aims at meeting the needs of victims through providing specific services. An important difference with the assistance offered by the police and judicial authorities is that VS may also orient its services to victims who have not notified their cases to the police. This way, VS is one of the few services that, being in connection with the criminal justice system, do not solely focus on the group of victims that are in contact with judicial authorities.

The main characteristics of VS can be identified from the following list:

- VS is usually provided by a public or non-governmental organisation that, given its task, tends to work closely to the criminal justice system and the police, but functions independently from them.
- The support they offer is generally free of charge, confidential, and usually complements the work of the other (state) agents in the field of victim assistance.
- In general terms, VS is expected to fulfil the following tasks: informing victims about their rights and their possibilities in terms of services, participation in the criminal procedure, and compensation; assisting victims in their immediate needs which includes emotional and practical support; accompanying victims during criminal proceedings when necessary; assisting victims after criminal proceedings; and referring victims to specialists if needed. Sometimes VS also offers legal aid, when victims can have a status in the criminal procedure.
- Some schemes of VS are operating mainly with volunteers, others with paid workers, and still others with a combination of both.
- The experience of VS can be highly valuable to develop victim policies. In fact, in countries such as Belgium, the Netherlands and the UK, VS does play an important role supporting research and offering feedback to the government about the impact of their policies.
- Therefore, VS has been conceived as a response to victims of crime that does aim at offering a timely attention and at covering the specific needs that victims have. It is a front-line service that assists victims in their short- and medium-term needs, especially in relation to the emotional impact of the crime and their contact with the criminal justice service. Long-term support such as therapy usually belongs to the field of specialised centres. VS and specialised centres are expected to collaborate in the referral of cases and other tasks that may contribute to reduce secondary victimisation in general ways.

Despite this general description, we should keep in mind that there is an important variety of VS schemes across Europe, which makes VS organisations difficult to compare. VS services may differ in several aspects such as the institutional setting and context, the type of target population they aim at, their objectives, type of assessments used, and type of intervention they implement.

Until now, VS in each country has tended to focus on specific types of crime. However, recent European regulation (in particular, the Directive 2012/29/EU) is promoting the establishment of minimum standards on the protection of and assistance to all victims of crime in Europe, regardless their nationality, type of crime and other personal or social characteristics. We will discuss this general orientation throughout this chapter.

The main organisation at the European level in the field of VS is Victim Support Europe. This independent organisation brings together VS organisations from 24 countries, some of them from outside the European Union, and aims at strengthening the rights and services for all victims of crime in Europe. The main strategy used to achieve this goal is actively trying to influence victim policies and legislation throughout Europe, as well as ensuring that VS services provides services of a good quality, oriented to meet the needs of victims.

In terms of the quality of VS services, Victim Support Europe has established that services have to achieve a) equal access for all victims of crime, which assumes on the one hand the need of national coverage of VS services and the establishment of a non-discriminatory practice on the other; b) that staff members or volunteers are carefully selected and trained; c) that their services are free of charge; d) that their services are confidential; e) that their intervention aims at strengthening victims' autonomy by honestly and sensitively informing them about their choices and respecting their right to make decisions; f) that services are independent.

Not all European countries have such autonomous VS organisations, understanding VS as the organisation that displays the characteristics listed above. Some of the countries without national VS services are Cyprus, Denmark, Greece, Italy, Latvia, Lithuania, Poland, Slovenia, and Spain. On the other hand, countries that do have VS at a national level are Austria, Belgium, Estonia, Finland, Germany, the Netherlands, Portugal, Slovakia, Sweden and the UK.

2 International regulations

The main international regulations on the specific issue of victim assistance and victim support are the following:

United Nations

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985.

Council of Europe

Recommendation Rec(87)21 of September 1987 on Assistance to Victims and the Prevention of Victimisation.

Recommendation Rec(2006)8 of June 2006 of the Committee of Ministers to member states on assistance to crime victims (replaces Rec(87)21).

European Union

Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Procedures (2001/220/JHA).

Directive establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime (2012/29/EU).

The **UN Declaration of 1985** was a milestone document that offered a first base to victim assistance. In this declaration it was stated that:

- "Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means."
- "Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them."
- "Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid."
- "In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above" (which refers to lack of discrimination of any kind based on race, beliefs, gender and so on).

The UN Declaration also emphasises the relevance of a) informing victims about the evolution of their judicial case, b) providing assistance to victims throughout the legal process; c) taking measures to minimize inconveniences to victims, and d) avoiding unnecessary delay in the disposition of cases.

At the European level, a first approach came from Council of Europe **Recommendation Rec(87)21**. This document offered general guidelines stressing the relevance of doing research in order to identify the dimensions of criminal victimisation as well as of the necessity to increase consciousness among the public in terms of victims' needs. It also emphasises the relevance of offering an immediate support to victims of crime, in terms of prevention of retaliation by the offender, and offering continuing medical, psychological, social and material help. Among other things, the Recommendation also encourages member states to create victim services that could offer support to both victims in general and "special categories of victims" such us children, victims of sexual and domestic violence and victims of organised crime.

Recommendation Rec(2006)8 goes further, specifying measures that member states should take in terms of both victim assistance and VS services. In terms of victim assistance, for example, the Recommendation establishes that member states should identify measures to alleviate the negative effects of crimes and stipulates that victim assistance should involve medical care, social care, material support and psychological health services. In addition, it recommends governments to develop VS services with minimum standards such as being easily available, to provide emotional, social and material support, be fully competent, provide information to victims about their rights, refer victims to other services if necessary and respect confidentiality. This recommendation also stresses the importance of developing specialised services, regardless the existence of general services of VS.

Even though the EU **Framework Decision 2001/220/JHA** of 15 March 2001 on the Standing of Victims in Criminal Procedures was a provision mainly oriented to define victims' rights in the

context of criminal proceedings, it dedicates few lines to VS. Importantly, this instrument was not anymore a recommendation (soft law) but prescribed measures with binding effect on member states. It establishes that "each member state shall ensure that victims have access to advice […], provided free of charge where warranted, concerning their role in the proceedings and, where appropriate, legal aid […] when it is possible for them to have the status of parties to criminal procedures".

Replacing the Framework Decision 2001/220/JHA, in October 2012 the European Parliament and Council of the European Union promulgated the **Directive 2012/29/EU**. As explained in the previous chapter, this Directive establishes minimum standards on the rights, support and protection of victims of crime that member states have to implement obligatory in a specific framework of time. Given its current importance, we will now highlight some of its articles concerning victim assistance and VS.

Directive 2012/29/EU

Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.

Art.8

Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interest of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim. (...)

Victim support services and any specialist support services may be set up as public or non-governmental organisations and may be organised on a professional or voluntary basis.

Member States shall ensure that access to any victim support services is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.

Art. 9

Victim support services (...) shall, as minimum, provide:

a) Information, advice and support relevant to the rights of victims on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;
b) Information about or direct referral to any relevant specialist support services in place;
c) Emotional, and where available, psychological support;
d) Advice relating to financial and practical issues arising from the crime;
e) Unless otherwise provided by other public or private services, advice related to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation.

Member states shall encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime.

Unless otherwise provided by other public or private services, specialist support services (...) shall, as a minimum, develop and provide:

a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation;
b) targeted and integrated support for victims with specific needs, such a victims of sexual violence, victims of gender-based violence and victims of violence in close relationships; including trauma support and counselling.

3 Domestic legislation in Europe

Nowadays, national legislation in Europe regarding the assistance of victims differs importantly. According to European studies, at least thirteen member states give victims the right to medical assistance and /or psychological counselling, among them Ireland and Spain. More common is the right to get legal aid (provided by seventeen European countries).

Variability of legislation in terms of victim assistance and VS can easily be seen in the four cases we are focusing on in this handbook. Let us use them as examples:

Belgium

No specific national law on victim assistance, except art. 46 of the Law on the police function (1992) that specifies the task of victim assistance by the police. The implementation of VS in Belgium has been mainly the result of political willingness and collaboration of three actors: the police, the justice system and welfare organisations. In 1998, an official Cooperation Agreement was signed, and confirmed by national law and regional decree, between the federal government (Ministry of the Interior and Ministry of Justice) and the Flemish Community in order to work together on victim assistance at different levels.

Ireland

No specific law on victim assistance. On 19 June 2008, the Minister for Justice announced the "Justice for Victims" initiative. This initiative includes a major new legislative package which involves some specific issues regarding victim participation in criminal proceedings.

Italy

No specific law on victim assistance. Current victim related laws focus on compensation schemes.

Spain

Separate legislative codes exist to refer to different matters. Some of them are: assistance to victims of crime (Law 35/1995), solidarity with victims of terrorism (Law 32/1999) and free judicial assistance (1/1996).
The Aid and Assistance to Victims of Violent Crimes Act of 1995 establishes, in addition to victims' right to information about financial aid, the dependence of VS offices on the Autonomous Communities. Apart from the social and psychological assistance, the right to free legal aid is not recognised.
In 2002, the Citizens' Rights Charter states that service offices for victims will be reinforced and their functions broadened. These offices would aim at integral services to the citizen affected by

crime, ensuring coverage across the country.
The Comprehensive Protection Measures against Gender Violence Act (2004) reflects the recent attention paid to victims of gender-based violence. It is applicable in all Spain and includes a complete recognition of the victim's rights of this type of crime. Rights to assistance are much more regulated for these types of victims.

4 Victim support in practice: strategies of intervention

What does actually VS perform and how? Here again, VS practices are very diverse in terms of strategies of intervention, target population, staff members and so on. Still, we would like to describe the practice of VS by illustrating it with concrete examples and discussing some of the main issues that appear relevant when implementing VS services.

Under the umbrella of VS we may find practices that differ importantly from each other such as hotlines and helplines (with crisis intervention), victim orientation and support, consultation, and legal aid and material assistance. As we will see in the following overview, although there might be some overlap between these categories, each strategy focuses on different target populations and aims at different things.

Hotlines and helplines: This strategy may be helpful if the purpose is to put into operation a wide-range service of easy access to victims of crime that can provide general information about the services available in the country. Helpline initiatives have been thought to constitute a front-line service, that is, the first service that victims may have access to.

One example of this type of strategy is the Crime Victims Helpline, created in 2005 in Ireland. This helpline aims to provide support, information and empowerment for victims of crime through a service available 7/24. The helpline a) offers support and an initial contact point for victims and their families, b) makes referrals to general and specialised support services, c) provides information regarding the criminal justice system, support services locally and nationally and liaises with other organisations; and d) offers also support about rights, so it has a different role than other organisations.

Helplines have the advantage of being a low-cost service that may reach an important number of people in a short timeframe. They may offer concise information anonymously, something that may be highly appreciated by some victims of crime.

We need to keep in mind, however, that any helpline is a reactive service: it reacts to the call of clients. The main disadvantage of this is that pro-active actions to approach victims are not part of the helpline strategy by definition. This may be a limitation for certain types of crimes where the victim may be doubtful about his/her victim status (as discussed in the previous chapter) and therefore feels uncertain on whether and how to proceed. In addition, it is well known that, in general terms, victims of crime are not especially pro-active in their search for help. On the contrary, several victims are resistant to contact services simply because they want to keep intimacy around the issue or because they want to avoid talking about the facts. So helplines will

mainly offer support to those who identify themselves as victims and who are aware to a certain extent that they may hold rights.

In addition, the implementation of helplines requires an important effort to inform the community. Knowing about its existence is a *sine qua non* condition for its implementation. For example, a recent study in Ireland showed insufficient awareness of the Crime Victims Helpline, not only among victims but also among professionals and practitioners that were supposed to inform victims about the existence of the service. When this happens, helplines may be underused.

Victim orientation and support: This is perhaps the most known form of VS. It aims at offering general support to victims of crime, in terms of information and emotional help. In general terms, victim counselling and support is offered by having a personal contact with the victim, either face-to-face or by telephone. It may involve visits to victims' home or appointments at the service. The kind of service provided through counselling and support can relate to elements as diverse as emotional and psychological help, orientation along the criminal procedure, and practical or administrative help, e.g. on how to apply to compensation programmes.

In certain schemes (e.g. in UK), this type of support has mainly been offered by trained volunteers. In others, such service is only offered by professionals.

One example of this type of (well established) services is offered by the Netherlands. VS Netherlands offers support to victims of crime, traffic accidents and catastrophe. They offer judicial, emotional and practical aid to their clients, through volunteers and paid workers. This service has nation-wide coverage, with 75 offices across the country.

Consultation: In this type of VS, attention is given to the professional help before, during and immediately after the criminal procedure, without being a long-term support that the victim may need to receive.

One example is the Spanish Offices for Victims of Crimes ("Oficinas de Atención a la Víctima de Delito", OAVD). These offices were created in 1996, as a free service offered by the Catalonian Department of Justice. The OAVD were supposed to constitute an information point, orientation, support, attention and referral to specialised resources for all victims that have been affected by a crime or misdemeanour. They are composed by a multidisciplinary team.

The work of the OAVD is based on the following principles: universality, service oriented to all victims of crime; proximity, accessible service through territorial or informative issues; specialisation of the staff members; confidentiality of the service; personalisation of the attention; immediate and coordinated intervention; coordination with other services; individual attention that encourages the independence and decision making of the victim. Among the services that these offices provide, are: a) social follow-up, referrals to a specialised service; b) psychological attention (crisis intervention and short therapeutic intervention of max 9 months); c) an orientation programme and judicial attention, d) company during the trial, e) a programme to administrate protective measures. The service originally starts with a general evaluation of the victim's situation at a psychological, judicial and social level, including the impact of the crime and risk of further

victimisation. This first assessment originates a working plan that usually addresses issues such as personal recovery and company during the criminal procedures.

This type of services offers a more specialised attention to victims than the former reviewed model, without constituting yet a specialised long-term counselling such as therapy. Its main advantage therefore lays in the interdisciplinary approach. It is important to keep in mind, however, that the Spanish Offices for Victims of Crimes, administratively dependent on the Justice Department, have been designed as auxiliary services to the justice system. This institutional context may weaken the independence that VS services aspire. In other words, needs of the criminal justice system may take priority. In fact, since 2004 and due to the promulgation of a new law on domestic violence, the Catalonian OAVDs have become mainly "coordination points" for protective measures in cases of domestic violence. In practice, this has decreased importantly the range of type of victims that are attending, mainly focusing since then on informing victims of domestic violence about how to get a protective measure, the penal situation of the offender, and coordinating with other organisations.

Legal aid and material assistance*:* Some VS services concentrate on providing legal aid exclusively, especially in those countries in which the victim can be a party of the criminal justice process. Such legal aid can go from offering general information in terms of victims' rights (e.g. right for compensation and how to apply for it) to offering legal representation in the procedure.

One example of this type of assistance is the service of Victim Support in Hungary. The underlying philosophy of this service is social solidarity and equity, since the state provides support to those that the state was unable to protect. According to the Hungarian Victim Support Act, VS aims to mitigate the social moral injuries and pecuniary harm of victims. The services offered by VS Hungary are the following: a) general information regardless their victim status (enforcement of their social rights and legal advice, without legal representation; legal representation is offered by another service, the Legal Aid Service, who just helps those victims who cannot afford legal aid by their own), b) instant monetary aid (which covers certain expenses related to the crime, such as housing, clothing, nutrition, medical and funeral expenses), and c) information about the possibilities of state compensation.

As can be seen, this type of VS is mainly focused on the practical and legal needs of victims of crime. We have seen in the previous chapter indeed that information and material or practical support are elements that victims may actually need. This type of services may offer a concrete help to many victims. However, emotional or psychological needs are not addressed.

The case of Belgium

In Belgium, victim support has been conceived as an integral part of victim assistance. Different actors have different tasks and are oriented to reach different groups of victims. The Belgian model is a kind of pyramid in which four levels of victim assistance have been conceived: 1) the level of the police, 2) the level of the prosecutor's office, 3) the level of social welfare services, and 4) the level of specialised services.

At the level of the police: The police has a clear function in order to avoid secondary victimisation from their part. This includes respectful treatment, information about available help and referrals

to other services. Because the police is the first actor that the victim usually gets in contact with, this type of service is expected to reach all victims who decide to notify their case to the judicial authorities.

At the level of the prosecutor's office: This level is dedicated to those victims whose cases are dealt with by the prosecutor's office. The service is part of the functions of the Justice Houses, where so-called justice assistants provide information and support to victims of crime in relation to compensation schemes and judicial procedures.

At the level of social welfare services: This level is oriented to those who need extra care. Referrals to this level are done automatically from the police, with the victim's authorisation. VS offers emotional, practical help and (judicial) information for free. The objective is to offer an answer to victims' needs and to help them in their work towards emancipation. This model aims at answering all the questions the victim may have, either by telephone or by face-to-face contact. VS also refers cases to a more specialised instance if needed.

At the level of specialised centres: This level addresses the needs of a minority of victims, in particular victims who are in need of psychotherapy because of the traumatic experience, or who have specific personal problems. This help may have a long-term character.

The CAWs

Given their relevance, we would like to focus on the third level, that is, VS at the level of social welfare services. These services have a territorial character and are offered - in the Flemish region - by local offices called "CAW" (*Centra Algemeen Welzijnswerk*, or "Centres for general welfare work"). These centres offer all kinds of social support for all citizens and for very different personal, social and relational problems, one of them being a victim of crime. Hence, the target group of VS within the CAW are victims of all types of crime, minors and adults, and their relatives who have suffered material, physical or psychological harm as the result of an act that is punishable according to the penal code, or according to other special laws. They also receive victims who have not notified their case to the police, relatives of victims of fatal traffic accidents and relatives of persons who have committed suicide. VS in Belgium has also paid special attention for child victims, after some studies in the field.

Importantly, the CAWs work both at the individual and structural level. This means that their interventions are not limited to help individuals but that an essential task is to also influence structural mechanisms in society that might increase possibilities of secondary victimisation.

5 Learning from experience and research

Do VS and its different models make a difference for victims of crime? Do they effectively help victims to overcome their suffering and meet their needs in terms of information and participation? Despite the growing interest for implementing VS services during the last decades, we need to say that, unfortunately, there is little research on VS and, in particular, on the effectiveness of VS. This means that we do not know very much in terms of the extent to which VS is useful for victims of crime. In addition to this, a main part of the documentation concerning VS consists of unpublished reports and thus remains unavailable. This all means that the practice of VS has remained out of

academic interest and that, when evaluations are done, they often stay as local reports that tend to receive little dissemination.

Having this in mind, we would nevertheless like to summarise some findings from the field, categorising them in a few big groups of aspects: coverage and access, volunteers or professionals, effectiveness, service providers and coordination.

5.1 Coverage and access

Some studies have concluded that not all victims have access to VS services. Why? In the following paragraphs, we will go through some of the answers, while we reflect on their implications.

Coverage. While almost all member states of the European Union have implemented a type of victim-oriented organisation, only 10 European countries provide services with national coverage. When setting-up new initiatives, one must be aware of the necessity of a nation-wide spread of the service, in order to avoid that big groups of victims will remain marginalised.

Type of aid. European reports have shown that at least 13 European countries give victims the right to medical assistance and/or psychological counselling and 17 provide the right of legal aid. This means that European countries have tended to focus more frequently on legal aid than on other types of assistance. When defining the focus of the intervention, we also need to be aware of what needs we are actually responding to and of what needs we are not. Services focusing on a specific aspect of the victimisation experience will neglect others. We need to keep in mind that the new Directive 2012/29/EU obliges member states to reformulate this in order to offer a more integral service.

Referrals. When VS services focalise on a specific type of help, it is crucial that solid referral mechanisms are established in order to complement the offer with other sources available in the country. This requires that VS services keep updated information about other organisations in the region and/or country and establish referral protocols with them.

Prioritisation. Regardless whether we are talking about a regional or nation-wide service, VS will need to clearly define the target population they want to work with. Should the service be available for all types of victims or should the service focus on some groups of victims? If some, how cases will be selected and under which criteria? In several countries, VS services have tended to focus on certain types of crime, or on what has been called 'conventional crimes', that is 'crimes of the street' or 'contact crimes'. Other types of crime, including crimes against vulnerable victims such as domestic and sexual violence, have usually been addressed by specialised services. Some countries, such as Ireland, developed local practices that have exclusively focused on special groups of indirect victims (e.g. relatives of victims of homicide). The decision of the prioritisation corresponds to a victims' policy decision. Currently, the Directive 2012/29/EU clearly states that VS services should be oriented towards all victims of crime, without making distinctions according to type of crime, but it also mentions that vulnerable victims deserve special attention. In that sense, every member state is encouraged to define a) which minimum services will be offered to all victims of crime and b) which special services will be provided to specific groups of victims and which groups these might be.

Vulnerable victims. Victims can be defined as vulnerable according to two main criteria: the victim's individual characteristics and/or type of crime. In the former case, victims can be considered vulnerable according to their age (minors or elderly), their health condition (e.g. people with mental or physical disabilities), their socio-economic situation (e.g. immigrants) or the relationship with the offender (e.g. victims economically dependent on the offender). In the latter case, classification per type of crime assumes that certain offences may imply a higher risk of re-victimisation, that power imbalances may perpetuate the situation or that the specific type of crime may produce a larger impact on victims. Some of these categories are victims of sexual offences, domestic violence, human trafficking, hate crime, and victims of terrorist attacks. The first category of victims (e.g. child victims) has received special attention from policy makers, especially related to the criminal proceedings. However, in matters of VS, it seems that the most common classification, when a prioritisation is made, involves distinctions per type of crime. For instance, some countries such as Spain and Ireland have opted for concentrating their efforts on certain victims, such as victims of terrorism, homicide or domestic violence.

When implementing VS services, it is important to keep in mind that the Directive 2012/29/EU emphasises the need of developing special services for these groups, such as shelters and safe accommodation, medical support, referral to medical and forensic examination, short- and long-term psychological counselling, trauma care, legal advice, advocacy and specific services for children as direct victims of crime. Given that every different type of vulnerable victim will require specific services, it is important to define the target population carefully and to determine what services can be provided.

Definitions of "victimhood". Data of the International and European Victimisation Survey carried out in 2004 and 2005 show that victims of sexual violence were the group most likely to receive support. In the opposite direction, victims of burglary were the less likely (30% of access in cases of sexual violence against 4% in cases of burglary). These figures may not only be reflecting the decision of policymakers in focalising VS services on certain types or groups. The figures may also reflect that judicial actors and practitioners in general tend to see certain groups of victims as more in need than others. For example, and in addition to the type of crime, studies have also shown that certain victims' characteristics increase the probability to be contacted by VS such as being poor, old and white (instead of wealthy, young and black or Asian).

What could explain this fact? We have seen in the previous chapter that certain victims' characteristics facilitate that victims are considered 'a (ideal) victim' by the social environment, including social services. These data therefore indicate that we need to be especially careful when deciding which groups of victims 'deserve' more support than other victims.

Access. Findings of international victimisation surveys (as well as some local evaluations – e.g. in Hungary and UK) have demonstrated that around 10% of all victims have access to victim assistance or a specialised agency and that a minority knows about available VS services in their countries. The question arises whether this may not be the result of a lack of interest from the side of the victims. Apparently not: the same surveys indicate that around 40% of the respondents would have liked to

have access to such a help. Comparable figures have been found in different evaluations. In Europe, most victims seem not to be aware of the existence of VS or specialised services.

This situation mirrors two problems connected to each other: a) a problem of information about the offer of VS among victims of crime and b) a problem associated with the strategy employed to reach victims.

In terms of access to information**,** it seems that victims tend to receive information more often from their informal social networks instead of receiving such information from official institutions. This may mean that official agencies, especially those entitled to refer victims to VS, are not informing their clients satisfactorily. Reasons may be several, including a lack of information among the referral institutions or lack of awareness of victims' needs. Whatever the reason, it is clear that any effective implementation of VS services requires strong networking in order to ensure that victims are informed timely and correctly with regard to the services available for them.

In terms of the chosen strategy to reach victims**,** we have seen previously in this chapter that several victims avoid searching for help. In this sense, a passive approach to contact victims (e.g. sending them an informative letter) seems to offer fewer results than an active approach (such as calling by telephone or visiting victims at home). Among strategies to reach victims, one of the approaches that has offered good results is a system of automatic referrals. For example, the police officer the victim has contact with asks immediately to the victim whether his contact details can be transferred to a victim support service. If the victim accepts, VS will call the victim later by telephone or will arrange a meeting. This out-reaching approach has been implemented successfully in Belgium and the Netherlands, increasing importantly the number of victims attended by the VS offices.

Follow-up letters or telephone calls also serve to increase the number of victims contacted. As was discussed in the previous chapter, a victim may refuse support at a certain moment of his recovery process, but may need it at another. Hence, the timing of the contact is relevant. While certain types of help may be well received in the beginning of the victimisation experience (such as material and practical help or legal aid), others may be more welcome at a later time (such as psychological counselling).

5.2. Volunteers or professionals

Several VS services include volunteers in their work. Some have based all intervention on volunteers (such as VS UK), others have a mixed model that combines professionals and volunteers (such as VS Netherlands and VS Flanders). The inclusion of volunteers has usually been associated with community-based services. The community is therefore the one that assumes an important role in supporting victims.

Volunteers have proved to be a useful strategy for offering victim support, even though studies have mentioned that the model has both advantages and disadvantages. Advantages relate to different aspects: it concerns a cost-effective way of providing help; more victims can be reached, also because of the flexibility of volunteers in terms of availability in the evening or during the weekend; the work of volunteers increases the awareness about victims' issues in the community;

the unpaid commitment of volunteers reinforces confidence of the victim in society. Disadvantages might be that victims may feel treated as second class citizens, compared with the range of professional help that the accused has access to; and even when volunteers are effective, to deal with the psychological effects of crime requires still professional services. Volunteers then can have a complementary role to professionals, and serve as a first line of support.

5.3. Effectiveness

There are three main approaches to evaluate the effectiveness of a VS scheme: evaluation can focus on how the victims' needs are assessed, on how the risks for the victims are assessed, and on how the service is meeting the victims' needs effectively.

Need assessment. Need assessment may be the first stage in the intervention of VS. It alludes to the activities that the professional or volunteer will do in order to identify the main needs of a specific victim in order to plan the corresponding intervention. Tools used to assess victims' needs in the field of VS are diverse. They may go from trauma or depression inventories to tools created specifically for the target population that each VS tries to reach. A tool may also be the initial interviews that the practitioner has with the victim. Unfortunately, there is no evidence about effectiveness of the different tools used for need assessment in different VS services. A study carried out in the UK identified, however, some factors that seem to contribute to an effective need assessment:

- the expertise and knowledge of the practitioner;
- victim-led assessment processes and therefore assessments that are responsive to the individual victim's circumstances;
- appropriate timing of the assessment, which involves the identification of both short- and long-term needs;
- balancing the need for a comprehensive needs assessment with minimising the negative consequences for the victim, in terms of time required and emotional impact of the process.

Risk assessment. Regardless whether we may consider pre-defined vulnerable victims according to type of crime, we still may need to assess victims' vulnerability within a certain group of victims or within other types of crime that are not considered risky *per se*. This may help to distribute the available resources in a better way and to distinguish the cases that could need specific services (e.g. protective measures or referral to specialists).

Directive 2012/29/EU emphasises the need to carry out risk assessments, including when referring cases to restorative justice programmes (see next chapter). Unfortunately, there is no systematisation in the literature on how risk assessments for victims should be done or on what dimensions they should be considered. This remains an important pending task for researchers, policy makers and VS organisations.

Meeting needs effectively. There are few studies that offer evidence about the effectiveness of VS schemes to meet victims' needs. The few studies carried out have focused on satisfaction of victims with VS services. However, the victim's degree of satisfaction might be an insufficient indicator to evaluate the effectiveness of VS. Effectiveness of VS should include other criteria as well, such as

accessibility, relevance of the intervention for the victim and the capacity of the service to help victims to achieve desired outcomes.

What do we know about VS and its effectiveness so far?

In a general way, victims value VS, on top of other forms of victim assistance.
When satisfaction has been measured, results usually have been positive, in particular when support is offered through face-to-face contacts. An evaluation carried out in Catalonia showed that victims gave an average score of 6.8 on a scale of 1 to 10. However, it was also found that the impact of the intervention remained limited, since VS operates as a first intervention that mainly keeps contact with clients by phone. For that reason, a restructuration of the victims' services has been recommended.

In Ireland, a study showed satisfaction rates of around 78%. However, lower satisfaction rates were obtained when evaluating the helpline service (around 50%). A main conclusion of the study was that there are too many specialised services, remaining disconnected from each other. This has an impact on victims' evaluation: services are perceived as less accessible and the information around them is confusing, especially when victims are not contacting the helpline (a first-line informative service) as expected.
Studies have also identified specific aspects of VS interventions that are considered by victims as valuable in particular, such as: timely contact, respectful treatment, being provided of detailed information, being supported morally, being attended by the same practitioner during the whole process, and contact after the trial.

In the Netherlands, a recent study also shows that high risk victims tend to feel less satisfied with different actors around the criminal justice system, including VS. This may mean that this group of victims has more complex needs.

Luckily, new instruments and evaluations are being developed at the moment. In the Netherlands, an instrument to measure quality in victim assistance has been developed during last years. The instrument assesses the quality of the assistance provided by different organisations (in particular, the police, prosecutor services, court services and victim support). The concept of "quality" has been defined according to victims' needs. This instrument distinguishes two types of needs: a) process needs (respectful treatment, information and participation) and b) outcome needs (acknowledgment, compensation, security, coping with or reducing feelings of anxiety and retribution).

A second ongoing study is the project "Victim Support Services in the EU: An overview and assessment of victims' rights in practice", carried out by the European Union Agency of Fundamental Rights. This project will provide concrete examples of different practices in the area of victim support and reviews current practices and gaps at the national and regional level. The aim is to generate an overview of different models of victim support highlighting good practices.

5.4 Service providers and coordination

VS services have been implemented throughout Europe from two main different institutional contexts: NGOs and the state. The state is the leading actor in providing services to victims in countries such as Malta, Romania, Spain, Estonia, Greece, and Bulgaria. NGOs are the main providers in Lithuania, Latvia, UK, Slovakia, and Ireland. Some countries, such as Austria, Belgium, Sweden, Hungary, France, and Denmark, have chosen a mixed model.

The existence of different types of service providers makes it more difficult to assess and evaluate the efficiency of VS and to compare models. Different institutional contexts may result not only in different ways of setting up VS, but also in different views on the needs of victims of crime.

Victims' needs are diverse and complex, therefore VS cannot expect to respond to all needs of victims by itself. However, the lack of coordination between VS and other institutions has been observed throughout Europe. This lack of collaboration also includes the coordination with the police. Importantly, a lack of cooperation brings about direct consequences for victims of crime, such as unclear information and weak referral procedures, and victims asking the same questions in different services. A feeling of secondary victimisation might be the result.

Developing victim assistance in partnership with other agencies will also improve the quality of the services through mutual learning processes. It will facilitate that most victims' needs are met thanks to the coordinated effort of different actors.

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Chapter 3: Restorative justice

Introduction

The majority of European countries nowadays see a proliferation of restorative justice programmes. For many countries, this development first took place in the juvenile justice field where most of the experiments were initiated. The approach was then extended to adults. In a context of crisis of the welfare state, these practices are being implemented step by step, promoting a participatory, horizontal approach to dealing with conflicts in all sectors of social life: work, school, neighbourhood, but most of all in the field of criminal justice. It is the latter which will be the subject of this chapter.

The implementation of programmes nevertheless needs to be put in perspective as differences can be observed between the various European countries. Not only must the state's justice system be receptive of the idea of restorative justice. Several elements can slow down this development such as punitive attitudes of political decision-makers, poor economic conditions that make it difficult to set up projects, corruption of a part of the criminal justice system, etc. Major differences can also be noticed between European states based on their judicial culture, differing political history and current socio-economic situation.

Because of the variety of restorative justice practices, it would be impossible to describe the context and organisation of restorative justice programmes in Europe in detail. We will hence attempt to present a general context. As the situations are so different, it is impossible to adopt a normative approach. Hence, the objective is to get to know the different European approaches by pointing out the strengths and weaknesses of the systems.

We will first deal with the definition of restorative justice and its characteristics. Next we will present a few major restorative justice models as well as the issue of their legal framework, the type of organisations dealing with such programmes, the type of crimes to which they can respond and the phase in the judicial procedure in which they can take place. At the end of this chapter we will an alyse some elements of the process of restorative programmes as well as the evaluation of restorative justice practices. But before that we would like to come back to the topic of the "key players " in restorative justice, those to which it wants to give back a role after having been forgotten by the classical criminal justice system, namely the offender (who is a mere spectator at his/her own process), and the victim and the community (who are both almost absent in the criminal process).

The protagonists of criminal justice. Several parties may be concerned by restorative justice: the victim, the offender but also the community. Restorative justice can thus provide an answer to the victim. However, differently from a victim-oriented policy which is clearly focused on the victim, restorative justice can also fulfil other functions, namely vis-à-vis the prosecuted offender or the community.

Even though the victim occupies an important place in restorative justice, the offender does as well. Amongst the opportunities that a restorative justice approach may present for the offender

we can identify the following: to understand the impact of what he/she has done, to give him/her the possibility to explain what happened and to be heard, to allow him/her to present another image of him/herself than the one that transpires through the act committed and hereby countering a (possible) process of stigmatisation, to deal with the practical and financial aspects of the crime committed, and so on.

Looking at the point of view of the offender is not only relevant for the offender him/herself, but also for the victim. It is, for example, important to underline that although some restorative programmes are initially developed to deal with offenders, in various cases these programmes can also present good results for the victims.

We should nevertheless point out that, in general, restorative justice has also been developed in order to give back a "real" position to the victim, a position which the victim did not have in the traditional justice system.

As mentioned above, the involvement of the community must also be considered in certain restorative justice programmes. This characteristic of restorative justice is important in the sense that it includes actors that are normally absent from the traditional justice system. What is more, restorative programmes give these persons an opportunity to play an important role in the response to crime.

The term "community" is multifaceted. Indeed, this notion can be understood in different ways. We can talk about the "community of care" or "micro-community". This definition includes the people who are, emotionally and physically, linked to the victim, the offender, or the crime itself. This is in fact the concept that is used most often in the context of restorative justice. But the community can also be seen as the "geographical community", for example the people who live in the neighbourhood where the crime occurred. We could also adopt a social definition by addressing the "community of interest" (in terms of work or leisure environment, for example). The notion of "micro-community" could also be applied to a school or prison setting.

In this context the community can play a role in different ways; either because it is directly concerned by the act committed, because of its possible support to victim and offender, or because it performs social control over crime in general.

We finally would like to underline the difficulty to define the term "community" for the European citizen. Indeed, in continental Europe, the community is often seen as naïve and a risk factor as powers are being concentrated in the hands of the state authorities. This idea is somewhat different for the Anglo-Saxons who are more sceptical vis-à-vis state powers.

Restorative justice takes an interest in the needs of the victim, the offender but also in those of the community. In order to implement efficient restorative justice practices, it is key to balance the needs of these different protagonists, with due attention for the victim.

1 Definitions and characteristics of restorative justice

1.1 No single definition of restorative justice

We first of all would like to point out that it is necessary to be careful when attempting to define restorative justice. Indeed, as this movement is evolving continuously, "various ideological and practical points of view exist. It would be wrong to think that *one* definition and *one* vision can capture the concept"[3].

Restorative justice is not defined by theories constructed independently from the actors on the field. On the contrary, the movement has developed on the basis of grass-root initiatives "that have grown step by step by building on theoretical reflections, and that have resulted in programmes of reform that are as coherent as varied"[4]. It hence does not consist of a method, but rather of a set of principles – set out here below – that can guide restorative practice.

1.2 A model which differentiates itself from other models

Traditionally, restorative justice has always been defined as being different from the rehabilitative and retributive models. Indeed, this justice model has been based on a number of theoretical arguments, of which the most important elements are set out below:

- Increasing critique on a justice system that does only allow a very limited position for the victim in its procedures, which may result in secondary victimisation;
- The observation of the disastrous effects of the justice system on offenders, who are not being rehabilitated;
- The importance of giving back an opportunity to the community to play a role in dealing with conflicts, and more precisely criminal conflicts.

1.3 Some attempts at definition

B. Galaway and J. Hudson give a rather clear definition of what they think constitutes restorative justice. According to them, " three elements are fundamental to any restorative justice definition and practice. First, crime is viewed primarily as a conflict between individuals that results in injuries to victims, communities, and the offender themselves, and only secondary as a violation against the state. Second, the aim of the criminal justice process should be to create peace in communities by reconciling the parties and repairing the injuries caused by the dispute. Third, the criminal justice process should facilitate active participation by victims, offenders, and their communities in order to find solutions to the conflict."[5]

Another definition, which is frequently used and accepted at international level, is the one of T.F. Marshall who defines restorative justice as "a process whereby parties with a stake in a specific

[3] A. LEMONNE, "A propos de la 5e conférence internationale sur la justice restauratrice. Accord ou contradiction au sein d'un mouvement en expansion?", in *RDPC*, 2002, p. 413.

[4] P. GAILLY, "Justice restauratrice et justice des mineurs", in *La Revue nouvelle*, March 2011, p. 61.

[5] B. GALAWAY, J. HUDSON (eds.), *Restorative Justice: International Perspectives*, Amsterdam, Kugler Publications, 1996, p. 2.

offence resolve collectively how to deal with the aftermath of the offence and its implications for the future"[6].

H. Zehr, who is considered by many as the founding father of restorative justice, proposes an adaptation of the latter, whilst questioning the need for a rigid definition: "Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs and obligations, in order to heal and put things right as possible"[7].

These definitions focus on the process used to respond to the crime that was committed by the offender. Other authors like L. Walgrave, a Belgian criminologist who is involved in this field, rather look at restorative justice in terms of the objective to be achieved, such as "an option for doing justice after the occurrence of an offence that is primarily oriented towards repairing the individual, relational and social harm caused by that offence"[8].

The European Directive establishing minimum standards on the rights, support and protection of victims of crime defines restorative justice as "any process whereby the victim and offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party"[9].

These definitions need to be considered in the light of the different conceptions that exist in the restorative justice movement. As we saw, certain definitions focus more on the process than on the result, whereas others on the contrary favour the objective of restoration.

G. Johnstone and D.W. Van Ness consider that there are three different and competing conceptions of restorative justice. However, they do not pretend that each restorative programme sit perfectly in one of these three conceptions.

The first conception is based on **encounter**. The focus lies on the process (framed by certain restorative values) that is being put in place in order to deal with the acts committed. By focussing on encounter, this way of defining restorative justice presupposes that "the victims, the offenders and other people concerned by a criminal act should be allowed to meet each other outside of very formal frameworks that are dominated by professionals, such as court rooms"[10]. The basic premise of this conception is that the offender, victim and all other persons concerned by a crime have a passive role in the traditional criminal justice system, the latter being in a sense delegated to deal with the problem. "Their problems" are being dealt with by professionals for them. Restorative programmes would, on the contrary, allow them to play an active role both in discussion and in decision-making, and this in a safe and supportive environment. The programmes would be implemented outside of the judicial framework. This type of conception favours the

[6] T.F. MARSHALL, "Restorative justice: an overview", *in* G. JOHNSTONE (ed.), *A Restorative Justice Reader. Texts, sources, context*, UK, Willan Publishing, 2003, p. 28.

[7] H. ZEHR, *The Little Book of Restorative Justice*, Intercourse, US, Good Books, 2002, p. 37.

[8] P. GAILLY, *op.cit.*, p. 59.

[9] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Framework Decision 2001/220/JHA of the Council.

[10] G. JOHNSTONE, D.W. VAN NESS, "Qu'entend-on par 'justice restauratrice'?", in P. GAILLY, *La justice restauratrice*, Bruxelles, Larcier, 2011, p. 27.

implementation of programmes like mediation and conferencing as the process is focussed on encounter.

The second approach rather focusses on **reparation**. The proponents of this approach agree that the injustice that is caused by one person committing a serious wrong against another needs to be put right. Whereas they argue that restorative justice should also include a certain sanction, "they insist that simply imposing pain upon offenders is neither necessary nor sufficient to make things right. (…) In particular, the harm which the crime has caused to people and relationships needs to be repaired"[11]. Hence the proponents of this approach consider that even though a process of encounter cannot take place, "the justice system should respond in a way that repairs the injustice that results from the wrongdoing instead of making it worse"[12]. Through this conception, we could consider the implementation of unilateral reparation initiatives such as, for example, community service. In this context it is possible to talk about "reparative sanctions" which are imposed, contrary to what is upheld by the first approach in which it is not possible to coerce the "offender".

Finally, the last conception goes beyond the limits of criminal justice. It is a **transformative** conception of restorative justice. The restorative justice movement has tended to focus its efforts upon social responses to crime and wrongdoing. The transformative conception goes beyond this idea and extends it to other fields. It considers that "the ultimate goal of the restorative justice movement should be to transform the way in which we understand ourselves and relate to others in our everyday lives"[13]. In order to reach this objective, larger and more fundamental transformations are needed than only those in the field of the social response to crime. According to this conception, "restorative justice is conceived as a way of life we should lead"[14]. This conception allows a recourse to mediation programmes in the sectors of daily life such as in the school environment.

G. Johnstone and D.W. Van Ness suggest not to put forward one conception to the detriment of the other two. The debates between the proponents of the different conceptions can, on the contrary, be very enriching on the condition that they take place with respect for the values promoted by the restorative justice movement. Other authors nevertheless suggest that this diversity may weaken the movement. According to them, it would be preferably to try to develop a normative theory. This would have the advantage of creating "a framework for resistance to the all too easy use of models that originated in the restorative approach, but that are oftentimes being used to attain punitive or rehabilitative objectives"[15].

The conception based on reparation allows taking into account more restorative programmes. It can encompass programmes like mediation (even though the objective of reparation remains more important than the encounter itself), but also educational efforts and community work. We refer to these different types of programmes in our handbook. We should nevertheless point out that we will mainly focus on "mediation" type programmes in our work.

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[11] *Ibid.*, p. 31.
[12] *Ibid.*, p.33.
[13] *Ibid.*, p. 35.
[14] *Ibid.*, p. 36.
[15] L. WALGRAVE, "La justice restaurative: à la recherche d'une théorie et d'un programme", in *Criminologie*, vol. 32, n°1, 1999, p. 24.

Why the name "restorative justice"?

The concept of "restoration" constitutes the cornerstone of this way of doing "justice": "restoration of the victim, restoration of the offender for a return to a life respectful of the law, restoration of the damage done to the community by the offence. The restoration is not only oriented towards the past; it is also, if not more so, dealing with the construction of a better society as much for today as for tomorrow"[16].

1.4 Characteristics of restorative justice

Even though the diversity of restorative justice programmes makes it difficult to formulate a precise definition of restorative justice, several common characteristics can be identified based on the definitions mentioned above:

- The first consideration of restorative justice is that the damage caused by the offence does not in the first place concern the state, but the persons directly affected by the offence. The first assumption of the proponents of restorative justice is that the traditional criminal law, incarnated by the state, has "stolen" the conflict away from the persons in order to have it dealt with by professionals[17];

- The process focuses more on the damage caused and the needs of the victims, the offenders and the community, than on the crime committed;

- It foresees a flexible response that is adapted to the circumstances of the crime that was committed and that takes into account the individual situation of the offender and of the victim as they are the ones that were directly involved in what happened;

- It provides a response to the crime committed that respects the dignity and equality of all persons. It builds upon understanding and promotes social harmony through the "healing" of victims, offenders and communities;

- Those who have been harmed by the crime are involved in the restorative process;

- The approach encourages the offender to become aware of what he/she has done and to take responsibility for it with a view to his/her reintegration into society;

- It is an approach that incorporates the resolution of problems and that looks into the underlying causes of the conflict;

- It is a response that recognises the community as having an important role in the prevention of, but also in the response to crime and social disorder; in this sense, the idea is to give the community a leading role in the rehabilitation of the perpetrator and the victim, but also in the prevention of delinquency.

[16] T.F. MARSHALL, "La justice restauratrice: vue d'ensemble", in P. GAILLY, *La justice restauratrice*, Bruxelles, Larcier, 2011, p. 151.

[17] On this subject see: N. CHRISTIE, "Conflicts as property", in G. JOHNSTONE (ed.), *A Restorative Justice Reader. Texts, sources, context*, UK, Willan Publishing, 2003, pp. 57-68.

Restorative justice is a movement (rather than a theory) that encompasses various – sometimes divergent – conceptions. These conceptions have an impact on the types of programmes put in place.

In general, restorative justice invites a reversal of the positions of those actors that play a role in the traditional criminal law.

2 Some restorative justice models

Since a few decennia, Europe has seen an important development of restorative justice practices. Nevertheless the implementation takes place in an unequal manner due to the differences in resources allocated by the various states. It is important to know the criminal justice system that is in place in each country in order to understand the place that restorative practices can have in it, and how and by whom they are managed.

Below we will look into the restorative programmes that are most used in Europe, namely: mediation, conferencing, sentencing circles and community service. Also victim awareness programmes and victim support will be mentioned briefly. On the European continent, mediation and community service remain the preferred restorative justice practices. We will nevertheless see that the boundaries between these practices are not strict and that various modalities exist within a restorative practice in Europe.

Before looking into the programmes in detail, we would like to come back to two key principles in the implementation of programmes, namely the recognition of what happened and the voluntary participation in the process.

As to the latter, several programmes insist on the voluntary participation of the parties in the restorative practice. The legal texts go in the same direction. The Recommendation of the Council of Europe concerning mediation in penal matters mentions that "mediation in penal matters should only take place if the parties freely consent. The parties should be able to withdraw such consent at any time during the mediation"[18].

Does this imply that involvement is not possible if it is not voluntary? Furthermore, the issue of consent is not static. Consent could be considered as something that could grow progressively. On the other hand, one could withdraw his/her consent. According to us, this issue should be linked directly with the recognition of what happened by the offender.

The UN Basic principles on the use of restorative justice programmes in criminal matters insist on the fact that "participation of the offender shall not be used as evidence of admission of guilt in subsequent legal proceedings"[19]. The EU Directive stipulates that "the offender has acknowledged the basic facts of the case"[20].

In reading these provisions, it seems that the question of the recognition of what happened is a blocking point as it appears difficult to implement a restorative programme if the offender does

[18] Recommendation No R(99)19 concerning mediation in penal matters, II General principles, 1.
[19] United Nations Basic principles on the use of restorative justice programmes in criminal matters, ECOSOC, 2002, par. 8.
[20] Directive 2012/29/EU, article 12, c).

not acknowledge what happened whilst the participation of the offender cannot be considered as proof of his/her guilt.

Admitting what happened can present certain difficulties when the restorative offer is made at prosecution level (before sentencing, when the offender is considered innocent). Indeed, in general the conditions of the programmes foresee that in case the mediation is unsuccessful, the willingness to participate in the restorative process should not be considered as an admission of guilt. However, if the procedure foresees that the offender has to recognise what happened, this will inevitably have an impact during the examination of the merits of the case.

In Belgium, the Youth Justice Act, which was reformed in 2006, initially mentioned three conditions which had to be examined by the judge before proposing mediation or a conference to a juvenile:

1. There are serious indications of guilt;

2. The person who is suspected of having committed an offence declares not to deny to have been involved in it;

3. A victim has been identified.

The first two provisions have been annulled by a judgement of the Belgian constitutional courtin 2008 due to a lack of impartiality of the judge, and due to the non-respect of the presumption of innocence and the right to remain silent[21]. Nevertheless, testimonies collected from juvenile judges show that these criteria continue to guide their choice. In fact they cannot conceive sending a juvenile to mediation or to a conference if the juveniles do not recognise, at least partly, what they have done.

In Ireland, the Children Act guides the juvenile justice system. Section 18 of this Act stipulates that a child that has committed a criminal act and accepts responsibility for what happened can take part in a diversion programme.

2.1 (Penal) mediation

Penal mediation can be defined as *"a process in which an impartial third party helps the victim(s) and offender(s) to communicate, either directly or indirectly. The mediation process can lead to greater understanding for both parties and sometimes to tangible reparation"*[22].

Several elements can be drawn from this definition.

First, a nuance has to be formulated with regard to *"an impartial third party helps the victim(s) and offender(s)"*. In fact, parties can get additional personal support from someone else during the process.

Coming back to the notions "directly or indirectly": for certain countries, "direct" (face-to-face) mediation is the rule. In other countries, victims who do not want to meet their offender face-to-face but who nevertheless want to participate in a mediation process can take part in

[21] Judgement of the constitutional court n°50/2008.

[22] M. LIEBMANN, *Restorative justice. How it works*, London and Philadelphia, Jessica Kingsley Publishers, 2007, p. 27. See also the definition of mediation in the Council of Europe Recommendation R(99)19.

indirect mediation. In that case the mediator acts as "go-between" and transmits messages between the parties. Although this indirect procedure can result in an agreement, practitioners and researchers underline that there is a risk that the agreement will be carried less by the parties than in the case of a direct mediation. Nevertheless, research shows that indirect mediation allows for the participation of more victims in restorative processes as many are worried about meeting their offender face-to-face. It could also be envisaged to start with a process of indirect mediation, followed by a direct mediation.

The term "mediation" is sometimes used incorrectly

For example, different types of mediation exist in Belgium. One of these is "penal mediation" which is addressed to adults and which in fact encompasses different modalities: victim-offender mediation, medical and therapeutic follow-up, community service or attending training, and paying damages and confiscation. The first form of penal mediation is actually the only modality in which the victim is involved, heard and recognised in the process as the solution to the problem is being negotiated between the parties themselves. Furthermore, mediation is an exclusive competence of the prosecutor's office which is the only one being able to initiate the proposal. What about the impartial party who guides the mediation process?

In the case of direct mediation, the "standard" process consists of several phases. First, the mediator meets the victim and offender separately in order to evaluate whether a mediation process would be suitable. All options are then considered. Often the meeting with the offender takes place first in order not to raise the victim's hope. If both parties agree to participate, they are introduced into mediation (the rules that guide the process, etc.). This is crucial in order to make them aware of all its aspects.

After this preparation, the meeting can take place, by preference on a neutral location which is acceptable and (psychologically) safe for both parties. The meeting is opened by the mediator who explains the principal rules of the process. Both victim and offender then tell their version of what happened and how they feel about it. After this, an exchange takes place during which questions can be asked. If it is appropriate, an agreement will be written-up and signed by the parties (it can take various forms). Finally, the agreement is being followed-up.

The procedure of mediation (juvenile justice, Flanders, Belgium):

1. The judge or public prosecutor makes an offer of mediation to the juvenile.
2. The mediation service contacts the two parties individually through a letter in which a first meeting is proposed.
3. During this first separate meeting, the mediator explains what mediation is (what are the possibilities?), what the role of the mediator is and which principles the mediator has to respect. The mediator will also check that the motivation of both parties is "correct". If both parties want to participate, the mediator will check whether the mediation will take place in a direct or indirect manner.

4. If a choice for direct mediation is made, in this common meeting both parties tell their version of the facts (the focus is more on their experience than on what happened exactly).

5. The mediator then helps them to investigate the possibilities for restoration, which can take a material or non-material form (eg. apologies). Both parties can also propose solutions. When a consensus is reached, the mediator formalises it in a written agreement.

6. After the agreement is signed by both parties (including the parents), it is sent to the judge or public prosecutor for ratification. Ratification will only be denied if the agreement is against public order.

7. The mediation service checks that the juvenile lives up to the commitments made in the agreement. If needed, the service offers active support.

8. At the end of the process, the mediator informs the prosecutor or the judge of whether or not the juvenile has kept his/her commitments vis-à-vis the victim. The mediator does not provide any information about the content of the mediation.

As to the question of the management of mediation by a neutral third who helps the parties, we have to keep in mind that the neutrality and the availability of a team that has received special training in restorative justice are two crucial elements for the implementation of restorative programmes. Neutrality can be defined as "facilitators must perform their duties in an impartial manner, with due respect to the dignity of the parties and should make every effort to reach an agreement that addresses the interests of the victim, the offender, the justice system, and the community"[23]. The neutrality of the mediators means that they defend the interests of all parties in mediation in a well-balanced manner. Contrary to what one could expect, the neutrality of the mediators is a source of satisfaction for the victims.

The United Nations Basic principles on the use of restorative justice programmes in criminal matters mention in relation to this that "facilitators shall possess a good understanding of local cultures and communities and, where appropriate, receive initial training before taking up facilitation duties"[24]. Two striking elements can be extracted from this provision. On the one hand, the need for mediators to receive training prior to taking up their duties. On the other hand, cultural specificities need to be taken into account in the implementation of restorative justice programmes. Facilitators and administrators of such programmes should also do whatever is possible in order to reduce the risk of bias or discrimination in dealing with offenders, victims and community members belonging to communities of different cultural or ethnic origins. In order to enhance positive relations, the programme should envisage proposing culture specific training to the practitioners. When initiating mediation, also socio-economic differences should be considered in order to prevent discrimination.

Finally, it is necessary to repeat that the existence of specific training for mediators is probably one of the most important means to ensure the quality of the restorative justice intervention, not only

[23] United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes. Criminal justice handbook series*, New-York, United Nations, 2006, p. 50.

[24] UN Basic principles on the use of restorative justice programmes in criminal matters, par. 19.

in terms of philosophy and working method, but also in order to allow the mediators to effectively take into account the perspectives of offenders and victims during the process.

A good practice example: 'Let's Share' programme (Catalonia)[25]

The Catalan Centre of Legal Studies and Advanced Training took the initiative, in 2006, to set up the 'Let's Share' programme for Catalan mediators in juvenile justice. Its objective was to put in place a permanent structure for these professionals in order to support them in their daily work through the exchange of knowledge and practical experience in order to solve common challenges.

In practice the mediators meet in different working groups in which they develop and talk about matters of interest. In the framework of these groups, research and good practices are being collected and discussed, and small-scale projects are set up. A multimedia platform has been created in order to allow continuous exchange between practitioners. This platform is in fact the primary tool for interaction between the members of the groups. The conclusions and the work realised by the working groups are presented during a seminar or a meeting that is organised once or twice per year and in which all mediators participate. The documents, amongst which the results and conclusions of the working groups, are collected and are made available via the multimedia platform to all the mediators. Finally, the dynamics created by this initiative reinforce the cohesion between the mediators working in the different Catalan mediation services.

2.2 Conferencing (community conferencing or family group conferencing)

Conferencing is related to the method of mediation. However, it brings together a larger group of people: the extended family of the offender or the victim, a support person (a physical education teacher, a psychologist, etc.), people who have been wronged by the crime, but also other members of the community who play a role in the prevention of crime. Often also a police officer takes part in the conference, as an official representative of society. Hence it has a stronger communitarian dimension in relation to the act committed or in relation to the social reaction, as compared to mediation. The idea is that the supporters, members of the community or all other relevant people (depending on whether it is a family group conference or a community conference) help to find a solution to the wrongdoing, help to deal with its consequences and help to prevent the risk of recurrence. In conferencing programmes, the mediator is usually called 'facilitator'.

The practice of *conferencing* can nevertheless take different forms in function of the crimes and the cultures in which they are implemented. Hence it is difficult to find a definition that unites all experts in the matter. In general we can nevertheless say that "*conferencing consists of a meeting, taking place after a referral due to an (criminal) offence. The condition sine qua non for it to happen is that the offender acknowledges the facts and takes responsibility for the crime. The meeting will be primarily between the offender, the victim (but it should never be an obligation for him/her), their supporters and a facilitator. Subsequently a number of other individuals may also take part, depending on the scheme or crime, such as a representative of the police, a social worker, a community worker, a lawyer, etc. After a period of preparation, all this assembly will sit together and discuss the crime and its consequences. They will try to find a just and acceptable outcome for*

[25] European Forum for Restorative Justice, *Restorative justice: an agenda for Europe. Supporting the implementation of restorative justice in the south of Europe*, Leuven, 2008, URL: http://www.euforumrj.org/projects/previous-projects/agis-3-restorative-justice-an-agenda-for-europe/

all, with an agreement including a number of tasks to achieve for the offender in order to repair the harm committed to the victim"[26].

The family group conferencing model consists of four phases:

1. *Preparation*. In consultation with the offender and the victim, the facilitator identifies the network surrounding the parties and prepares them for the meeting.

2. *Information giving*. At the start of the meeting, the facilitator explains the working principles of the meeting. After this, an exchange about what happened and how the parties feel about it takes place.

3. *Private family time*. After the exchange between the parties, the meeting is broken up. The (juvenile) offender then has some private time with his/her family and supporters in order to work out an agreement that will be submitted to the victim. The offender usually also commits him/herself to develop initiatives towards the society and towards him/herself in order to limit the risk of recidivism. Although the procedures of mediation and conferencing resemble each other a lot, private family time is a very specific aspect of conferencing.

4. *Agreeing the plan*. The agreement is signed by the parties. It is then implemented by the (young) offender. A follow-up of the implementation takes place.

Some countries in Europe implement conferencing, mostly for juveniles. This practice nevertheless remains less well-known than mediation as the parties (and programme managers) do not always grasp this communitarian dimension.

In Ireland, in the framework of the "Garda Youth Diversion Programme", conferencing can be part of the model that is implemented (it can serve to act as intermediary between offender and victim or allow to formulate an action plan for the young person). The victim must agree to it. The consent of the young person is not required, but the professionals nevertheless have to obtain his/her opinion on it.

2.3 What are the differences between mediation and conferencing?

It is interesting to look at the differences between mediation and conferencing. Traditionally, the main difference between the two has been that conferencing brings together support persons for the victim and the offender whilst in mediation only the victim and offender take part. Nevertheless, this difference in terminology is not used everywhere. As we have seen above, in some mediations it is possible to involve people who support the offender or the victim as well.

The advantage of mediation could consist in the fact that less people are involved, which could make the discussion easier as it provides for a more intimate setting. In case a victim or offender is nervous, conferencing has the advantage that he/she can be helped and supported in the process, which could help in making the communication easier. The resource persons can also support the offender in living up to his commitments vis-à-vis the victim and the society.

[26] I. AERTSEN, K. DOHERTY, J. SHAPLAND (*e.a.), Conferencing: a way forward for restorative justice. A practical guide*, Leuven, European Forum for Restorative Justice, 2011, pp. 9-10.

But how to decide on whether to send a case to one or the other programme? Some consider that the seriousness of the offence can be an indication for sending a case to conferencing rather than to mediation because it is more demanding to organise a conference. Others point to the communitarian dimension of the act that was committed. In fact, some "argue to use the criterion of the 'radiation' of the criminal act: a high level of impact on the community would indicate a preference for (…) [conferencing] rather than for a mediation"[27]. Other experts put forward that the choice should be guided by the preference of the persons and what they expect. Hence, we should see the relation between mediation and conferencing in a flexible way.

2.4 Sentencing circles

Sentencing circles involve even more people than conferences. All members of the community can participate. What differentiates them even more from the other modalities is the presence of a judge or prosecutor. All participants, i.e. the parties who are supported by their families, the community, the judge, the lawyers, the prosecutor and the police officer are seated in a circle facing each other.

The process takes place in the framework of the criminal procedure, at the request of the magistrate. In the countries in which this practice exists, sentencing circles are usually only implemented when the offender pleads guilty (hence, the offender generally has to recognise what he/she did).

We can identify four phases in the sentencing circle procedure:

1. Determine whether the case is suitable for a circle.

2. Prepare the parties that will take part in the circle.

3. Try to reach a consensus between the parties (whilst taking care of the needs and the protection of the community and of the victim, and keeping in mind the rehabilitation and "punishment" of the offender) and sign the agreement.

4. Organise a follow-up of the agreement and make sure that the offender sticks with this agreement during its implementation.

Once the agreement is finalised, it is usually sent back to the magistrate who was not involved in the circle gathering but who examines it and decides to apply it, to complement it, etc.

Only few practices exist on the European continent and sentencing circles are even less known than conferences. A new initiative has nevertheless been put in place in 2011-2013 in three European countries, coordinated by the University of Tuebingen, Germany[28].

2.5 Community service

If we consider a reparative conception of restorative justice, "community service" type programmes that allow for a "one-sided" reparation by the offender, need to be taken into account.

[27] P. GAILLY, *op.cit.*, p. 66.

[28] http://www.jura.uni-tuebingen.de/einrichtungen/ifk/forschung/implementing-peacemaking-circles-in-europe

Community service consists of "non-remunerated work done by the offender to the benefit of the community or its institutions with the intent to compensate the harm caused by the offence to the community"[29].

Community service is a common practice in the juvenile justice field in Europe. This type of practice is oftentimes considered as a form of symbolic reparation to the community. However, in the juvenile justice systems with a rehabilitative tradition, many consider it rather as an alternative to the usual treatment of the "offender".

Is the community a victim? Can the community really be regarded as a victim? According to some authors, the community can be considered as a secondary victim as it is indirectly affected by the crime. Indeed, the harm resulting from many crimes goes beyond the suffering of an individual victim. The harm to the community can be diverse: it can be concrete and of a material nature, but most of the time the harm is indirect and abstract. The crime committed can, indeed, constitute a threat to the quality of life and social peace. Work for the community can hence be seen as an act of reparation to the community as compared to reparation to concrete direct victims. However, although community work seems appropriate if the victim refuses or is not able to confront the offender, or in the case of crimes without a direct victim, we have to be aware of the fact that this type of programmes is limited in its capacity to offer reparation that meets the needs of the victim. Furthermore, we have to point out that certain researchers in the field consider both victim and offender to be part of the community. In this light it would make little sense to research the segregation between the community and the victim.

Remark on the position of community service as restorative programme. Some authors fear that the fact of considering community service as a restorative programme would bring about "a shift of the attention to the needs of the concrete victims to the demands of the social institutions"[30]. Rather than to exclude these restorative programmes to the community, Walgrave proposes to describe their nature and their aim in detail, whilst keeping in mind that attention needs to be paid to the demands of the concrete victims. He considers that seeing community service as a punishment does not constitute a restorative approach as the objective might no longer be to repair but to deter the offender by imposing a punishment. Considering community service as a rehabilitative or re-educational method, as is often the case in juvenile justice, does not pursue a restorative objective either. Quite on the contrary, "in such programme the suffering of the victims is sometimes used as 'didactic material'[31]". A restorative outlook can only be achieved if community service is used to "compensate the harms, to restore peace in the community and/or to contribute to a feeling of security in society"[32].

The "Nenagh Community Reparation Project", a pilot project implemented in Ireland for adults, is not an alternative to the justice system, but rather an additional option for adults who plead guilty. Victims, offenders, families, support people and members of the community are involved in addressing "community reparation".

[29] L. WALGRAVE, *op.cit.*, p.18.
[30] *Ibid.*, p. 19.
[31] *Ibidem.*
[32] *Ibidem.*

2.6 Victim awareness work

In order to make offenders aware about the effects of crime on victims, victim awareness programmes have been put in place for offenders.

These programmes can have an individual or collective character. Some researchers suggest that a group approach makes it easier for offenders to challenge themselves as it allows for an exchange of ideas and points of view between the participants.

Some organisations that are in charge of restorative initiatives for juveniles in Belgium have implemented such experimental projects. They consist of victim awareness work in groups of juveniles who have committed a crime and are aimed at responsabilisation and consciousness-raising. This type of programme allows to discuss and exchange views on specific topics. In Belgium as in other countries, victim awareness programmes also operate in adult criminal law, be it as alternative sanction or during prison time.

2.7 Victim support

According to the reparative conception of restorative justice, as the focus is on reparation, we have also to include programmes that aim to respond to the needs of the victim independently of the willingness of the offender to repair the harm committed.

For complete information on victim support and assistance programmes, please consult the chapter that is dealing with Victim assistance and Victim support. This chapter discusses different definitions of these concepts, national and international regulations on the matter and intervention strategies.

Restorative justice programmes are very diversified. From this range, a choice can be made in function of the objective pursued by the restorative programme, or for example the type of crime committed (e.g. with or without a communitarian dimension). However, independently from the objectives pursued, practices are sometimes applied in a poor or biased manner, in particular due to a misunderstanding of the actors who are supposed to implement them.

3 Which legal framework?

Since the 1990s, various supranational and international institutions have encouraged the development of restorative justice practices. In many countries, we can notice an important impact of these institutions on the restorative practices.

We first present the international legal framework (to which reference has been made already). Next we will look into the status (legal or not) of restorative programmes at national level. Finally we will discuss the advantages and disadvantages of the lack of a legal framework.

3.1 The international legal framework

International texts that have influenced the implementation of restorative justice practices in European countries can be identified at different levels. These texts are of a diverse nature and do not have the same binding legal force on the countries.

First of all, the Economic and Social Committee of the United Nations adopted a resolution in 2002 dealing with **Basic principles on the use of restorative justice programmes in criminal matters**[33]. Based on the increased use of restorative justice programmes and of the advantages of this method, the Principles aim to inform and encourage Member States to adopt and standardise restorative justice measures in a legal system.

As to the matter of the legal framework, the Principles provide, in paragraph 12, some guidelines for implementing new programmes and a new legislative framework: "Member States should consider establishing guidelines and standards, with legislative authority when necessary, that govern the use of restorative justice programmes. Such guidelines and standards should respect the basic principles set forth in the present document and should address, inter alia:

a) the conditions for the referral of cases to restorative justice programmes;
b) the handling of cases following a restorative process;
c) the qualifications, training and assessment of facilitators;
d) the administration of restorative justice programmes;
e) standards of competence and rules of conduct governing the operation of restorative justice programmes."[34]

At European level, there is first the Council of Europe **Recommendation n° R(19)99 of the Committee of Ministers to member states concerning mediation in penal matters**[35]. This recommendation formulates guidelines meant to promote the implementation of mediation. As to the legal framework, the recommendation states that "Legislation should facilitate mediation in penal matters. There should be guidelines defining the use of mediation in penal matters. Such guidelines should in particular address the condition for the referral of cases to the mediation service and the handling of cases following mediation. Fundamental procedural safeguards should be applied to mediation; in particular, the parties should have the right to legal assistance and, where necessary, to translation/interpretation. Minors should, in addition, have the right to parental assistance"[36].

Council of Europe **Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims**[37] deals in one of its articles with the issue of restorative justice and more particularly mediation from the point of view of the interests and the protection of victims.

At the level of the European Union, the issue of restorative justice was regulated until recently by the **Council Framework Decision of 15 May 2001 on the standing of victims in criminal proceedings**[38]. Even if the subject of the framework decision is much larger than the issue of restorative justice, mediation in penal matters was nevertheless dealt with. The framework decision obliges the European Member States to adapt their national legislation in order to give

[33] United Nations Basic principles on the use of restorative justice programmes in criminal matters, ECOSOC Res. 2012/12.
[34] United Nations Basic principles, par 12.
[35] Recommendation No. R (99) 19 of the Committee of Ministers to member states concerning mediation in penal matters, adopted on 15 September 1999.
[36] Recommendation No R (99)19 concerning mediation in penal matters, III. Legal basis.
[37] Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims, adopted on 14 June 2006.
[38] Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, 2001/220/JHA, OJ L 82/1 of 22.3.2001.

victims of criminal acts a minimum level of protection. It also states in its article 10 that Member States need to promote penal mediation when this seems appropriate.

However, this framework decision has been replaced by the **European Directive of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime**[39]. This directive aims at giving more and more detailed rights to victims. In relation to restorative justice, article 12 states that the victim has to receive complete information before accepting to participate in a restorative process.

3.2 Towards a national legal framework …

The status of restorative justice programmes is very varied throughout Europe. In certain countries, programmes are foreseen in the law. In other countries the programmes do not have a legal status. Also within the same countries there are variations at the level of the legal framework. The legal framework for juvenile programmes is often more extended, whilst practices for adults are oftentimes less institutionalised. What is more, some countries do not have any specific laws dealing with restorative justice; here, programmes are implemented by "using" certain legal provisions, as is the case in Spain, Italy or Ireland for example.

The 2001 Children Act in Ireland provides an example: it facilitates the use of restorative justice for minors (it stipulates that alternative measures need to be considered before detention) but it does not contain an explicit reference to restorative justice.

The openness for such a practice must be seen in the framework of its belonging to either of the two main judicial families. In common law countries, such as the UK, "part of the law does not depend on the will of the legislator but on the judges' recognition of principles and practices that exist in society. The flexibility that ensues from it results in a framework that is more favourable to social experimentation. The civil law systems of roman-canonical tradition, of which the German, French, Italian and Spanish systems result, are more rigid"[40]. We can nevertheless notice variations in the rigidity in civil law countries. Certain countries are creative in order to accept restorative practices, in general by using certain articles of law that allow, under certain conditions, to close criminal proceedings. The family of the common law countries has the advantage of a higher flexibility, which can play an important role in the development of restorative justice practices, whereas the other law family is standing for better judicial guarantees to the parties.

What does a legal framework allow for to be put in place? It allows systematising the use of restorative programmes as the parties have a legal base that can be mobilised. It also gives the governments a judicial framework in order to finance restorative programmes. Further, it makes that restorative programmes are no longer subject to the goodwill of the actors of the justice system. A legal framework also gives the parties a certain legal safeguard (by fixing criteria in terms of judicial assistance, the right of presumption of innocence, etc.). In the other situation the absence of a law makes, amongst others, that the programmes are dependent on the initiative of community leaders and the goodwill of members of the criminal justice system.

[39] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315/57 of 14.11.2012.

[40] J. FAGET, *La médiation. Essai de politique pénale*, Ramonville Saint-Agne, Edition Erès, 1997, p. 47.

But the importance of a legal framework is also relative. The absence of legislation does not necessarily entail the downfall of restorative programmes. Its absence can in fact also be compensated by certain measures like the adoption of guidelines for courts, such as is the case in certain autonomous regions in Spain. What is more, the adoption of legislation does not necessarily lead up to the use of the programmes. Resistances in the field can explain the weak implementation of a restorative programme even if set in a legal framework.

In order to ensure a broader application of restorative justice principles, it is necessary to facilitate the implementation of restorative programmes by inviting the different actors concerned to exchange experiences in a formal context or by organising training.

Moreover, a legal framework can also bring about certain difficulties such as having the process be guided by the needs of the justice system rather than those of the parties themselves. It can also reduce the reach of restorative justice to certain types of crimes (mainly less serious crimes).

In Spain, there is no criminal legislation for adults that regulates the use of mediation or other restorative justice processes. "But it does provide in distinct ways for the attainment of specific legal and penal benefits for offenders who voluntarily make reparation to the victim. The 1995 Criminal Code was the first legal text in Spain to introduce victim reparation as an institution producing different consequences that may reduce the sentence handed down to the adult offender. In sum, through the institution of voluntary reparation, which may be facilitated by mediation, we may consider restorative justice to be explicitly recognized in the texts on adult criminal law"[41].

4 Organisation

4.1 What are the services that implement restorative programmes?

The services responsible for implementing restorative programmes can be very diverse. In certain countries, such as in France and Finland, volunteers play an important role in the implementation of, for example, mediation. In other countries, as in Belgium, the practice is highly professionalised.

This diversity can also be seen in the relation between the services and the justice system. Certain systems are exclusively based on the criminal system, such as penal mediation in Belgium. Others have more of a "communitarian" character (mediation for redress in Belgium, for example, which is implemented by two NGO's throughout the country, these are "private" agencies financed by the public sector). The organisations implementing restorative programmes can also be of a mixed nature (in-between public and private).

In Italy three common elements can be discerned in the organisation and financing of mediation services:

1. They are public services, financed and managed by local institutions (municipalities, provinces, regions).

[41] A. VALL RIUS, "Restorative justice in Spain: criminal legislation affecting juveniles and adults", in D. Miers, I. AERTSEN (ed.), *Regulating Restorative Justice. A comparative study of legislative provision in European countries*, Frankfurt, Verlag für Polizeiwissenschaft, 2012, p. 352.

2. Magistrates played an active role in the establishment of the services.

3. The collaboration and agreement of social workers has been an essential condition for the functioning of mediation services.

The Council of Europe recommends mediation services to have a certain autonomy in the justice system. If this is not the case, there is a risk of a lack of neutrality.

The type of organisation that implements a restorative programme is obviously linked to the phase of the procedure at which the programme intervenes. Programmes that are implemented at the level of the police can rely on police agents. This is for example the case in Ireland where programmes for juveniles are run by "Garda Siochana" in the framework of the Children Act 2001. The implementation of provisions that run parallel to the procedure rely more on non-governmental organisations.

4.2 For what types of crime?

Let us first point out that, as the Council of Europe stipulates in its recommendation on the matter, restorative justice programmes could *a priori* apply to any type of crime, independent of how serious they are. The notion of seriousness must moreover be evaluated on a larger basis than only according to the judicial category. The seriousness of the crime in its legislative sense is not the sole criterion that must be taken into account. It must also be evaluated based on the impact the crime had on the victim and on other persons and their needs. Various restorative programmes can intervene in addition to other measures. In this sense, the issue of the seriousness of the crime is less determining for sending cases to restorative justice programmes.

For example, violent crimes do not necessarily have to be excluded from restorative programmes. The determining factor should rather lie in whether "an individual victim or offender appears likely to be physically or verbally violent, or overbearing, so that the meeting could be damaging"[42]. An adjustment in the organisation of the programme is also possible in order to allow for a greater participation of the parties in the restorative programme.

"Mediation for redress" in Belgium does in fact deal with more serious crimes.

The experience with more serious cases can present good results. Indeed, it is often this type of crime where victims have the most serious needs and questions on the nature of the crime and the background of the offender, that calls for mediation. Moreover, the organisation of a mediation or a conference takes a lot of time, which is another element to justify a focus on more serious crimes. However, the more serious the case is, the more difficult it is for lawyers, victim support services or mediation services to convince the public prosecutor or the judge to refer the case to mediation.

Since long the evaluation of restorative programmes in Europe has shown that these were mainly used for less serious crimes. We can nevertheless notice a certain evolution. A trend can be observed in Europe which shows that an increasing number of "serious" cases are sent to

[42] I. AERTSEN, R. MACKAY, C. PELIKAN, J. WILLEMSENS, M. WRIGHT, I. AERTSEN, R. MACKAY, C. PELIKAN, J. WILLEMSENS, M. WRIGHT, *Renouer les liens sociaux – Médiation et justice en Europe,* Paris, Conseil de l'Europe, 2004, p. 21.

restorative programmes. "Serious" and violent crimes do not have to be excluded and we can in fact see that several programmes focus specifically on this type of cases.

In Ireland, the "Garda diversion programme for juvenile offenders" deals with all types of crimes.

Nevertheless, several nuances are to be made.

First of all, restorative justice programmes dealing with more serious crime often intervene at a later stage of the criminal justice procedure, depending on the purpose that is given to the programme (whether it stands for a diversionary measure or for an intervention parallel to the legal proceedings).

In Belgium, less serious offences can go to diversion programmes via "local mediation" at the level of the police, or via "penal mediation" at the level of the public prosecutor's office. More serious cases can be treated at a later stage and in parallel to the procedure, as a complement to the traditional criminal justice system through "mediation for redress". In fact, the law of 22 June 2005 which allows the use of this type of mediation, does not impose any limits in terms of seriousness of the offence.

Next, even if legal provisions for example try to extend the type of offences that can be referred to mediation, the practice in the field does not always follow this logic.

In Italy, for minors, there are in principle no limitations as to the type of offence that can be referred to restorative programmes. In practice we can nevertheless see that certain elements play an important role in the decision of the judge or prosecutor to send a case to mediation, such as the relationship between offender and victim, or the fact that it concerns a first-time offender.

4.3 At which phase of the procedure?

Several institutions, such as the United Nations and the Council of Europe, highlight that restorative justice programmes should be available at all stages of the criminal justice procedure. In practice we see that in European countries restorative programmes are used at different stages of the procedure.

In fact, a restorative programme can intervene:

1. Totally outside of the criminal justice system.

2. As a mode of de-juridisation (diversion).

   Restorative justice practices can be used as a diversion practice (used by the police or the public prosecutor). This means that if the process is successful, the charges will be dropped. It is actually in this phase of the procedure that we find the highest number of referrals to restorative programmes.

a) *at police stage.*

This option is only possible if the police has discretionary powers in deciding what to do with a case. Certain cities in Belgium have organised "local mediation" for minor offences which allows, if the process is successful, to close the case at the level of the police.

b) *at the level of the public prosecutor.*

In common law countries the police can make wide use of diversion measures. This practice increasingly exists also in civil law countries. Furthermore, the distinction must be made between countries applying the opportuneness principle to legal proceedings, on the one hand, and countries applying mandatory prosecution, on the other hand. The principle of the legality of proceedings (mandatory prosecution) can in fact present an obstacle for the diversion of a file.

In Spain, for minors, article 19 of the Organic Law 5/200 "provides for the dismissal of criminal proceedings through reconciliation or reparation between the minor and the victim for less serious and lesser offences. According to this article the Attorney General may stop proceedings being continued in certain cases lacking any serious act of violence or intimidation where the minor has reconciled with the victim or has undertaken to repair the damage caused to the victim or another injured party"[43].

c) *After conviction, but before determination of the sentence (cf. common law system).*

Let us point out that, regarding mediation processes after conviction but before determination of the sentence, "in common-law countries, convictions (finding of guilt) and sentence (imposition of sanction) are two separate stages in the criminal justice process. After conviction the case is often adjourned for about three weeks, so that the probation service can prepare a pre-sentence report. The possibility of mediation can be explored during this time, and may be included in the report to the court"[44].

In Ireland, the Nenagh Community Reparation Project is based "on the community reparation model of restorative justice. Following a guilty plea in court, a judge may refer an offender to the project to participate in a process of reparation. The reparation process consists of the offender and victim coming together, along with the various community stakeholders, to discuss the offence and reach a unanimous resolution. This agreement is then presented to the judge, who was the ultimate authority in deciding if a proposal is satisfactory"[45].

d) *In the framework of or in addition to a sentence (with the exception of a prison sentence) or as an autonomous measure*

We can observe in Belgium that both mediation and family group conferencing for minors can be combined with, for example, educational measures and community service.

e) *In prison (post-sentence or pre-release)*

Several elements explain the advantages of such an initiative at this stage of the procedure, such as helping the offender to develop empathy for and raise awareness about the victim, helping the victim to get answers on remaining questions about the offender and his stay in prison, and create a climate of social peace in the prison.

[43] A. VALL RIUS, *op.cit.*, p. 347.

[44] I. AERTSEN, R. MACKAY, C. PELIKAN, J. WILLEMSENS, M. WRIGHT, *op.cit.*, p. 24.

[45] S. NORTON, "The Place of Victims in the Criminal Justice System", in *Irish Probation Journal*, vol.4, number 1, September 2007, p. 71.

In the beginning of the years 2000, Belgium saw the introduction of restorative justice advisors in the prison system. This initiative took place against the backdrop of a wish to see the justice system evolve from a repressive to a reparative one. The task of the full time appointed restorative justice advisors consisted essentially in developing a culture that respects the various actors and in promoting a penitentiary policy in line with restorative justice values and principles. In a symbolic way, the implementation of this provision opened the prison doors for a restorative culture. However, this did not go without difficulties due to the practical impact of the differences between the criminal and restorative logic. The position of restorative justice advisor does no longer exist nowadays. Nevertheless, several reparative activities remain, such as mediation in prison and victim awareness programmes, for example.

The cities of Turin and Milan have launched a reparative mediation project in prison. Hence it deals with cases that are rather serious, and which are sometimes specific to the Italian context such as serious violence, terrorist acts, etc.

f) *Parallel to the procedure.*

Certain countries have adopted restorative justice programmes that run parallel to the criminal procedure. This means that the programme is implemented when the public prosecutor's office has already decided to prosecute. But even if the procedure runs in parallel, it does not mean that no links with the procedure are possible. In general the judge will take into account the agreement reached during mediation.

In Belgium, "mediation for redress" is, since 2005, a legally established offer that can take place at all stages of the criminal justice procedure (preliminary investigation, investigation, examination of the merits of the case, or at the stage of the execution of the sentence).

Let us now look at the different programmes and their place in the different phases of the procedure.

As to the practice of mediation, different options are available at all the stages of the criminal procedure. Mediation can be initiated by the different actors of the criminal chain (the police, the public prosecutor, the judge, the probation service, the prison, etc.). But, "prosecutors are the main source of referrals to mediation in most European countries in which the principle of opportuneness (appropriateness) is followed. Even some of those which use the mandatory prosecution (legality) principle have modified their practice to allow this"[46].

Conferencing can be used as a diversionary measure. It can also be initiated at sentencing stage as an alternative to placement for example. Sentencing circles are logically part of the criminal justice process and include criminal justice professionals in the process itself. Community service can intervene at various stages of the procedure. For adults, for example, there even exist programmes in the context of the prison system.

Restorative provisions can intervene at all stages of the procedure. The moment at which the programme is implemented always depends on the objectives of the programme and the type of offences. The programmes implemented at prosecution level are, for example, diversionary measures and apply to less serious cases. On the other hand, provisions that run parallel to the

[46] I. AERTSEN, R. MACKAY, C. PELIKAN, J. WILLEMSENS, M. WRIGHT, *op.cit.*, p. 23.

judicial process can "more easily" apply to more complex situations and the cases dealt with are rather serious.

5 Some questions related to the procedure of restorative justice programmes

5.1 Who initiates the referral to restorative programmes?

When the programmes are inserted in the criminal justice process, it is logical that the judicial actors initiate them, even if a lawyer can for example plead in favour of a programme before the public prosecutor or the judge and hence influence this magistrate. In this framework the majority of restorative programmes are initiated by the public prosecutor. The latter has in fact a considerable power to select cases in those countries where there is a lack of legislation or directives. When the programme takes place in parallel, in general all persons concerned by the crime can set the process in motion: the offender, the victim or sometimes any harmed person.

5.2 How are the cases selected?

Some authors plead to select the cases for referral to a restorative justice programme in order to ensure that its implementation is feasible. As we have seen, the process is more tricky to put in place for certain cases. This is especially so for cases of domestic violence or sexual crimes.

The quality of information given to the victim or the offender when inviting them to participate in the process is very important, independently of the type of professional who makes the proposal. Several restorative justice principles need to guide this selection. As we have seen before, it is important that there is enough proof against the offender, that the parties consent, that the socio-cultural differences are not too big, etc.

Finally we have to keep in mind that the selection criteria may vary considerably between countries, but also depending on the preferred type of programme. For example: certain countries limit mediation to first-time offenders, the selection being made by the courts. In other countries mediation requested by the victims themselves is favoured. The issue of the recognition of the facts can also vary depending on the instance and the country in which the practice is implemented. Certain require that the offenders recognise what they have done (even if their participation cannot be considered as an admission of guilt), whilst in other cases, such as for certain family group conferences, the criterion is the fact that the offenders do not deny their responsibility vis-à-vis the acts committed. The programmes that are implemented at the level of sentencing are generally aimed at juveniles that have been found guilty by the judge or that have pleaded guilty.

5.3 What is the role of lawyers?

The European Convention on Human Rights stipulates in article 6.3 c) that each person has the right to be assisted by a lawyer in a criminal procedure. If the person does not have the means to pay for this assistance, it needs to be provided free of charge. This right to assistance and representation can, however, turn out to be opposed to the principles defended by restorative justice. Indeed, the idea is that the participants in restorative programmes speak for themselves. The resolution of the conflict in the framework of a restorative programme must, in addition, be beneficial for both parties, which is not the case when a criminal case is dealt with by lawyers only. This explains why there is resistance against their involvement in the restorative process itself. Others nevertheless consider that lawyers who are sensitive to the restorative philosophy may be able to support their clients before and after the restorative process.

Moreover, lawyers can play a role in order to protect legally the participants and to avoid, for example, an overexposure of the offender or the victim in the framework of programmes in which more people participate, such as conferencing.

In relation to restorative group conferences for minors in Belgium, the Youth Justice Act stipulates that all people concerned by the restorative offer must be informed of their right to a lawyer in order to get advice before accepting the restorative offer and to be assisted by a lawyer as soon as an agreement is reached. The fact whether or not lawyers should be able to participate in the encounter itself is being debated.

5.4 Where does the meeting take place?

The direct (face-to-face) meeting obviously needs to take place on a neutral (for both parties) location which is, by preference, not linked to a certain "authority" such as the court.

5.5 What type of agreement?

The agreements can take on different forms: financial compensation, "moral" commitment, apologies, etc. Their field of application as well as their structure can also vary a lot. Mostly the agreements are drawn in written form, but this is not always necessary.

Let us nevertheless keep in mind that the agreement must suit all the parties participating in the restorative process. It must be the result of a consensus and it must be proportional and "reasonable" in order to be feasible and not to give false hope to one of the parties. Finally, it has to aim at giving a sense of responsibility to the offender, and at meeting the individual needs of the victim and/or the collective needs. The agreement must also be agreed to voluntarily.

5.6 Is the agreement sent to the judge?

This depends on whether the programme is implemented within or in parallel to the justice system. The agreement can in any case be sent to the judge in order to be taken into consideration in the follow-up of the file, even if the process takes place in parallel to the criminal procedure.

A general principle of confidentially nevertheless applies to the content of the encounter. Indeed, the confidentiality of the content of the discussion in the framework of a restorative justice programme is a key value in their implementation. The European Directive establishing minimum standards on the rights, support and protection of victims reminds this principle: "Discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest. "[47]

Hence, the contents of the discussion in the framework of restorative justice programmes are *a priori* confidential. They cannot be disclosed without the consent of the parties. "The only exception is that mediators are bound by laws and/or professional standards requiring certain things to be reported, such as the imminent commission of a serious crime"[48].

The programmes which do not involve a direct victim, such as community service, result in reports – transmitted to the judge – of a less confidential nature.

[47] Directive 2012/29/EU, article 12, e).

[48] I. AERTSEN, R. MACKAY, C. PELIKAN, J. WILLEMSENS, M. WRIGHT, *op.cit.*, p. 30.

Let us nevertheless remember that a restorative justice programme can be successful even if an agreement is not reached. A victim can, for example, be satisfied of having had the possibility to tell his/her version of what happened to the offender, even when this does not result in a written agreement.

5.7 Follow-up of the agreement

A follow-up system for the agreement must be in place for each programme.

This mechanism can be organised in different ways. It could be done by another organisation than the one that guided the restorative programme. It could also be the responsibility of a judicial agency, the police or a non-governmental organisation.

In case the agreement is not respected and if the case is directly linked to the judicial procedure, this information should be transmitted to the restorative justice programme and/or the judicial actor who has made the referral. Nevertheless, the fact that an agreement – other than a judicial decision or a judgement – is not respected, should not necessary lead to a stricter sentence in a later criminal procedure. Let us finally point out that the compliance with agreements reached through mediation is - in a general way - much higher than those imposed by courts.

6 How are restorative justice programmes evaluated?

The implementation of a new model inevitably entails that questions are being asked as to whether the new programme works effectively, even if other systems, such as the retributive model, that have shown their limits, continue to be used.

Through instruments such as the Council of Europe Recommendation on penal matters and the UN Basic principles on the use of restorative justice programmes in criminal matters, international institutions encourage member states to promote research and evaluation of restorative practices. This should be done in collaboration with civil society, and should in particular aim at finding out how such programmes can be an alternative or an addition to the criminal justice system.

Many evaluative studies have been carried out in the field of restorative justice. However, in spite of their ongoing development, many of these present methodological limitations: the people who run the evaluations advocate for the implementation of such practices; it is difficult to constitute control groups of victims and offenders who went through the traditional justice system; indicators used to evaluate the success of a programme are not comparable; different methodological options are taken, etc.

We can identify two principal themes that have been evaluated the most: the satisfaction of the parties with the restorative process and recidivism.

Let us first look at the question of satisfaction. Satisfaction refers to the situation in which the process corresponds to the expectation of the parties. This does not necessarily mean that they are completely happy or enthusiastic. Satisfaction must be seen in the context of the expectations voiced at the start of the process (for the victims it consists generally in getting information and in being able to explain to the offender in person what the impact of the crime was). Moreover,

"satisfaction is a concept that embraces a broad range of feelings and subjective evaluations"[49]. In general research shows that victims who participated in a restorative programme are more satisfied than those who went through the "traditional" criminal justice system. However, not all studies that show positive outcomes in terms of satisfaction, have involved a control or comparison group (victims who did not participate in the restorative justice programme). Moreover, the evaluation is often done with victims whose offenders have, in most cases, recognised what happened. What is more, it is not impossible that some victims come out of the process more "damaged" than before its start. But this group remains very limited. Dissatisfaction from the side of the victims is often the result of a bad management of the restorative justice process (for example: the victims has not been invited or informed appropriately). Research also shows that the offenders are somewhat more satisfied (+/- 80 %) than the victims. We should nevertheless consider that there is a correlation between the satisfaction of the offender and that of the victim. Indeed, it has been shown that when the offender is satisfied with the process, this is also the case for the victim, and conversely.

The issue of satisfaction logically brings us to consider the issue of the willingness to participate as it is evaluated, after the process, against the expectations of the parties before entering the restorative process. Due to the focus of this handbook on the status of victims, we prefer to concentrate on their reasons to participate. Several studies show that between 30% and 50% of the victims are ready to meet their offender face-to-face. The possibility of an indirect restorative process, without direct meeting, increases the willingness to participate to 70%. There are many motives for participation but two come out on top, namely the need to receive information and more explanations as to the reason for committing the crime and the need to explain the impact that the crime had on them and their relatives.

The second major research domain concerns the issue of recidivism. Also here, different methodological biases can be seen. For example, in order to evaluate recidivism, it should be possible to – first of all – define in a uniform way the concepts of "restorative justice" and "recidivism". However, we have dealt with the difficulties in defining restorative justice. There also exists a big diversity in the concept and evaluation of recidivism (for example: is the criterion for recidivism to have committed new offences, to be arrested by the police, or to be convicted by the court?). Even if we are able to define these concepts adequately, difficulties remain in setting up the right research design, for example to construct a setting with experimental and control groups where participants can be assigned to randomly.

What is more, for some the first concern of restorative justice is not to prevent new crimes from being committed. The aim is more to react to what happened through reparative measures. This does not mean that restorative justice should lead to more recidivism than the programmes of the traditional justice system.

Finally, the research results on recidivism still show different trends. Although more recently research shows positive effects in favour of restorative justice programmes, "the results on recidivism are complex and sometimes contradictory. Restorative justice interventions are not a

[49] L. WALGRAVE, "Examen des pratiques de justice restauratrice", in P. GAILLY, *La justice restauratrice*, Bruxelles, Larcier, 2011, p. 380.

magical option that allow to eliminate recidivism. We notice that they have a tendency to reduce recidivism, but some studies have shown an increase"[50].

Finally, despite the number of studies in Europe, it remains difficult to formulate definitive conclusions as to the effects of restorative justice programmes.

- In certain European countries, the evaluations of restorative justice are not published sufficiently even if there are some internal evaluations of the programmes. Next to the question of evaluation, the issue of the dissemination of information is crucial. Indeed, the public opinion is often not familiar with restorative justice practices. This knowledge would allow to increase the involvement of citizens in restorative justice programmes and to improve the "restoration of peace" in the community after serious incidents. Hence it is important to not only inform the authorities, but also the public opinion.

- The issue of the evaluation of programmes also invites us to question the funding of these studies. In the context of an economic crisis, several actors underline the lack of means available for evaluating the practices as well as their temporary nature. We nevertheless maintain that evaluation is crucial and may permit to save money in the middle or long term.

- The complementarity of qualitative and quantitative research approaches should be put forward in the evaluation of programmes. In order to realise a systematic evaluation, it is necessary to collect a whole set of data needed for this ongoing evaluation (which type of victim does the programme aim at, which type of offences, the profile of the parties, the number of files sent to the programme and their nature, information about the referral agencies, etc.). This could form the basis for further qualitative studies. A methodology for the permanent collection of data on the daily practice, on the one hand, and on more in-depth evaluation and follow-up, on the other hand, should be put in place as of the set-up of a new programme.

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Chapter 4: Victim assistance/support and restorative justice in theoretical and practical perspective. How to implement a better response to victims' needs?

Introduction

In the previous chapters of this handbook, we have tried to highlight, successively, "what it is to be a victim of crime", "what kinds of victim assistance and support services can be implemented" and "what is restorative justice".

In this last chapter, as a conclusion, we would like to address the main challenge of this handbook: how to implement a better response to victim's needs?

In order to answer this concern, we will take a look at the potential complementarity of "victim assistance/support" (VAS) and restorative justice (RJ) programmes. We will first do so at a theoretical level (1), and then we will examine how this complementarity currently takes place in practice (2). This exercise will also offer an opportunity to explore possible limitations to this complementarity, empirically revealed by the study of specific situations in different countries. Finally, based on these reflections, some overall recommendations (list of things to do) to implement restorative justice programmes and victim support programmes in a complementary way will be suggested (3).

1 In which way are VAS and RJ programmes complementary to each other in theory?

RJ and VAS do not have the same starting point. They do not refer to the same objectives and programmes, they do not involve identical key actors.

RJ suggests an alternative way of doing justice. RJ programmes, in the framework of or parallel to the criminal justice system, mainly intervene following the commission of a crime when it has been reported to the justice system. In this philosophy, all involved parties should have their say in the social reaction to the crime that was committed. Mediation and conferencing programmes, involving dialogue between victims, offenders and the community, are the core tools of RJ. However, according to a reparative conception of RJ, unilateral measures, such as victim awareness programmes, victim support and community service order programmes are considered to be part of this justice model. For the sake of clarity, in this chapter, aiming at researching the complementarity between VAS and RJ programmes, the latter programmes will be linked to an understanding of RJ in the large sense. RJ programmes in a narrow sense will be referring essentially to mediation and conferencing projects involving a dialogue between stakeholders.

There is no doubt that RJ – at least from a theoretical point of view – can contribute to answer the needs of victims to a certain extent. Indeed, as opposed to the rehabilitative and retributive

models, advocates of RJ put forward that in RJ victims are given an active role and a place which the victim does not have in the "classical" justice system. This model in fact attempts to resolve the incompatibility, present in the other main justice models, between VAS and the rehabilitation of offenders.

VAS policies respond before all to the requests and needs of victims. VAS programmes are mainly oriented towards victims in terms of the management of the consequences of their victimisation and in order to avoid secondary victimisation, in particular through a transfer of information on the judicial procedure or still through an active support of a more general nature. In other words, it helps victims to find their way in the traditional justice system in order to avoid secondary victimisation and to recover more generally from what happened. The VAS field is enclosing a great variety of programmes: victim counselling and support in the framework of the criminal justice system, legal counselling, financial compensation, therapy, medical help to victims, … VAS services can intervene as soon as a victimisation has been experienced, independently of the journey of the offence through the judicial system.

Even if the starting point of both kinds of programmes is different, we would nevertheless like to point out that these two approaches could give positive results in the best interest of the victims when considered in a complementary manner.

2 VAS and RJ programmes: an answer to all types of needs, for all types of victims?

2.1 To all types of needs?

If we want to consider RJ and VAS interventions in a complementary manner, it is interesting to first question how, theoretically, both kinds of programmes can apply to “all types of needs" and to “all types of victims”.

As concerns the needs, victimological research has learned us that needs are diverse and that they mainly depend on the individual position and life trajectory of the victim. Victimology has also highlighted the importance of taking these needs into consideration in order to avoid secondary victimisation.

We will deal with some of these needs below, in a non-exhaustive manner, discussing how VAS and RJ can answer them, respectively. Let us nevertheless already point out that within both the VAS and RJ fields, a variety of programmes exist, that sometimes pursue specific objectives, methodologies, target publics, ... It is, hence, only possible to highlight the main trends of this potential complementarity.

- The *need for information*: victims need to get clear and correct information about services available to help them recovering as well as about what they can expect throughout the various processes they are involved in (criminal process, compensation procedures, mediation process …). This need is usually poorly met by the key actors of the traditional justice system (police, magistrates, lawyers…), and there is no doubt that VAS programmes can help victims in fulfilling this need, especially VAS services in close connection with the criminal justice system. At their level, however, RJ services can also be a valuable resource of information to victims, especially when it comes to explain what the latter can expect from RJ programmes and how

they relate to criminal justice decision making. It requires however, that RJ practitioners - being professionals or volunteers- have a good knowledge of the working principles of the criminal justice system and of the other resources available to help victims recovering.

- The *need for compensation*: compensation procedures exist in many countries ("civil party"; "state compensation funds"…). VAS programmes can help the victim to obtain reparation in informing them about their rights and in accompanying him/her through the procedure. Nevertheless, despite this help, many victims are not reimbursed or only very late in the "classic" process. Compared to the traditional justice system in which the payment of legal costs and fines often precede the compensation to victims, a victim is more likely to receive financial or material compensation during a RJ process. RJ programmes can indeed provide the victims the benefit of being compensated by the offender in a very practical and direct way, with a high probability that the compensation agreed on will be paid effectively. Moreover, victims value the fact that the offender him/herself is paying the damages voluntarily, rather than this is imposed by the court or paid by the state or an insurance company.

- *Emotional needs*: emotional needs are stressed by many victims. VAS can meet them in various ways (e.g. counselling, support, specialised psychological help…). However, for some victims, RJ can provide an additional response to these needs. In the context of RJ programmes, the victim can express his/her emotions and find some needed information about "what has happened to him/her and why". Research has emphasised that this process can be important for the victim in order to recover from or simply go through the event. In particular, RJ can provide an efficient response to emotional needs because it allows the victim to address directly emotions and questions to the offender himself. This is often seen by the victim as a more convincing exchange of information than the one he/she can find in reading a criminal file or in participating in the trial.

- The *need to participate*: for a long time, the victim has been excluded from the criminal justice system. This willingness to participate, to be involved in the criminal justice process goes far beyond the need of financial reparation or the expectation to get decision making power (in terms of punishment, for example). It is, often for victims, a matter of recognition. Studies have shown that procedural justice, in general, provides a better feeling of justice than substantial justice. Since the 1990s, provisions have increasingly been implemented in order for victims to participate in the criminal justice process (civil party, compensation fund, victim impact statement, right of giving and asking information …). Again, VAS programmes can play an important role in informing and supporting the victim in these contexts. But RJ clearly offers another possibility for the victim to participate directly or indirectly to his/her case, be it in a process parallel to the criminal justice system or as a diversion measure. The issue of participation in RJ programmes can be observed in its relation to the high level of satisfaction that can result from it for victims. Indeed, research has shown that the majority of the victims who participated in a RJ programme are satisfied with the process. Moreover, it shows that they have a more positive attitude towards the authorities and the judicial system than the victims who went through the "classic" system.

- *The need for protection*: victims often need to protect themselves in order to recover from the negative effects of what happened to them. In this way, they want to feel safe, prevent

recidivism and, if possible, play a role in their own healing and protection in the future. Again, VAS services have an important role to play in fulfilling this need, be it by counselling/supporting victims through the criminal justice system or by social, psychological or medical help. However, it is expected that RJ programmes can also reach, to a certain level, this specific need. If, as we know, the effect of RJ programmes on recidivism is still unclear, at a more individual level, restorative justice programmes can help to increase the feeling of security for victims. This effect can find its roots in the participatory character of the RJ programmes and, in particular, the capacity they offer to victims to ask questions and to be informed about the past and future intentions of the offender and the community.

- *Needs of a more practical nature*: these needs oftentimes arise immediately after the crime has been committed but particular attention should be given to them all along the process. VAS programmes are obviously the best placed to help victims on this matter (be it by the programme itself or by giving information on other possibilities). Actors of RJ programmes should however complement this role in paying attention to these needs and in participating as much as they can, in the information of the victim about available resources to them.

As we can see, neither VAS nor RJ alone can provide an answer to all the needs of victims. However, they each can contribute significantly, subject to the limits of their own work principles and duties.

2.2 To all victims ?

In order to orient a victim towards one or another type of programme, it is important to have a good knowledge of the potentialities and limits of each programme in responding to specific needs. However, it is also important to question whether VAS and RJ are valuable answers to the needs of all victims. Is there a specific category of victims not being able to be taken in charge by one or another type of intervention?

In general terms, few restrictions exist. However, some victims seem to be more vulnerable psychologically and socially than others. They therefore can be in need of more assistance and support than others, be it in general, in the course of the criminal justice process, or during the restorative justice process.

As many victims have different needs depending on their individual profile, some emphasise that it is also the case according to the type of crime committed. It is often put forward that a person who has been the victim of a small property crime will *a priori* be “less damaged” than a victim of severe violent crime; that victims of a sexual offence or of violence between partners cannot go through a mediation process because of the power imbalance between the parties … Victimological research tends however to show that the types of crime as determined by the judicial categories are not a good parameter for discriminating in advance victim’s damages. Some crimes, apparently minor from a judicial point of view, can have a damaging impact on the life of some victims. On the opposite side, some RJ programmes present good results for rather serious crimes. Even, if dealing with serious crimes or sexual crimes requires cautious methodological attention, excluding a priori victims of these crimes from RJ programmes could contribute to the damage done to these victims by the crime. Hence, in this case, it would be advisable to base the choice for referrals to restorative programmes on the characteristics of the victims, rather than on the facts themselves.

Regarding these questions, creating and implementing need and risk assessment protocols could be valuable (see chapter 2). However, meetings individually with the victim will always be necessary in order to orient the victim towards one or another type of programme. Moreover, before all, the victim should receive enough information about available services in order to decide by him/herself about hi/her level of participation in VAS or RJ programmes.

Objectively spoken, VAS programmes can reach victims where some RJ programmes cannot. This can, obviously, be the case for victims for whom the offender is not found or not ready to participate in a mediation or conferencing process. For many crimes indeed the offender is not known or arrested, and therefore restorative justice is not an option for the majority of victims. Restorative programmes in their narrow sense can logically only be initiated when the offender has been apprehended. Depending on how we consider the restorative element of restorative justice in a large sense, programmes for the restoration of the victim in a unilateral manner, without any intervention from the offender, of course remain possible.

On the basis of the forgoing we can conclude that there are different ways for victims to participate and to be supported, depending on their individual profile. This increases the necessity for VAS and RJ programmes to work in complementarity.

Let us keep in mind that:

- RJ and VAS initiatives may both reach a large variety of victims who may have the same needs at various levels.

- Their intervention should not be static but dynamic in time. It is possible that victims first turn to a support programme, and that they participate in a restorative programme later on. Research actually shows that victims who first appealed to a victim support programme are more satisfied with the RJ programme afterwards. Also, the victim's needs emerge right after the crime was committed. Thus, victim support and assistance measures – such as giving information – can start immediately after a complaint has been lodged with the police. RJ processes, from their side, are usually less attractive for victims at this stage as they can, for example, still have considerable feelings of anger towards the offender. Especially for the most serious offences it seems that the chances for a mediation offer to be successful increase when some time has passed, when a victim has been able to prepare the meeting with the offender, after having benefited from victim support for example.

- Finally, neither RJ nor VAS alone, can meet all the needs of all the victims. As a result, it is valuable not limiting the way victim interest are taken into account only to one kind of programme.

To conclude, the fields of victim support and assistance and of restorative justice could present very complementary interventions if:

- they both can reach a large variety of victims‘ needs and of victim categories;

- they can work together when they reach the same victim or the same needs (for example by meeting different needs at different moments during the procedure or the healing process of the victim).

This can only contribute to an overall increase of victim's satisfaction.

3 In which way are VAS and restorative justice programmes complementary in practice?

After looking at the way in which VAS and RJ are complementary from a theoretical point of view in order to answer the victim's needs, it is necessary to consider this potential at a practical level.

Good availability of different kinds of VAS and RJ programmes constitutes undoubtedly a pre-condition to answer to a majority of victim's needs. However, as we have seen in chapters 2 and 3, in practice many countries in Europe are still facing a lack of availability and diversity of VAS and RJ programmes. However, examples of good implementation of VAS and/or RJ programmes can be found, as in Belgium, the Netherlands, Austria, Finland, for example (see below). The reasons for this sometimes unequal development have to be analysed in depth for every country. Let us only say that, often, besides political and compassionate statements regarding victims and RJ, the real willingness to implement thoroughly these practices in the criminal justice field does not always make part of the priorities of policy makers, unless they enter in another political agenda (fight against impunity, increasing of punitiveness, new managerialism, …). This lack of general availability of services often prevents the implementation of a complementary strategy both at the macro-, institutional level and at the local level.

As these strategies are more developed in some countries than in others, usually the question of complementarity raises problems for various reasons:

- *Resistances from one field towards another*. A recent study shows that VAS and RJ programmes can differ in their way of viewing the status of the victim. The actors of the victim support field, for example, assume that: 1) victims are vulnerable and that some of them are too traumatised to participate in restorative justice programmes; 2) in order to increase their well-being, victims want a specialised victim service to intervene, or that they at least want that their situation is being evaluated by professionals of the field; 3) victim support and assistance services tend to believe that restorative justice is better suited to deal with minor crimes, as victims of more serious crimes run a higher risk of secondary victimisation; 4) they also believe that the wish to meet the offender is seldom a priority for the victim after a crime has been committed. This difference in perception seems to have an impact on the way the complementarity between both fields can take place in practice.

Some victim support services consider restorative justice programmes to be a risk for the participating victims. It is important to note, that some key-actors of the criminal justice system have sometimes the same assumptions as victim support services concerning the risk of victimisation of the victim as a result of a mediation programme. It gives them sometimes an additional reason not to refer a case to a restorative programme, even if this seems appropriate (one knows that referrals to restorative justice are not always favoured by magistrates when this

does not meet their own priorities). This concern is somehow reflected in European Directive 2012/29/EU (stressing the necessity to protect the needs and interests of victims when RJ is being offered).

The sometimes negative or protective attitude by VAS professionals vis-à-vis restorative programmes because of the possibly negative consequences for the victims can partially be explained by their lack of knowledge of both the processes and the outcomes of restorative justice. Indeed, research has shown that only few victims are more "damaged" after a restorative process. In various countries, there exists little collaboration between victim support services on the one hand, and restorative justice programmes on the other hand. This lack of collaboration can also be at least partially explained by of the lack of knowledge that practitioners of both fields have of the advantages of their complementarity. Indeed, also on the side of restorative justice, professionals of the field have a tendency to develop stereotypes about VAS programmes. Some consider indeed VAS services to be too "protective" of their victims.

However, when the respective positions are explained to the actors of the other fields (being RJ, VAS, magistrates …) the settlement of common strategies can easily be managed, at least at a local level and around individual cases. This oftentimes leads to good results for the parties themselves. Hence, these tensions can potentially be overcome through awareness raising initiatives on both sides.

- *Victims excluded from VAS and RJ*. As already mentioned, a considerable variety of programmes exists in both VAS and RJ fields. The - too few - evaluation studies in the field of VAS, however, show that VAS programmes reach a quite small population and that they have the tendency to focus on specific victim's types. Problems related to the limited knowledge of many victims of the existence of VAS programmes, the sometimes a priori selection by practitioners as well as the necessity of having a pro-active approach towards victims, have been raised in chapter 2. Also for restorative justice, specific problems may arise with their implementation:

  - *RJ programmes are sometimes too much offender oriented*: the focus of some RJ programmes may be more on the positive effects for the offender or the community, than on the benefits for the victims. Various authors point out situations in which the victims are used, for example, as educational or rehabilitative tools for the offender in the framework of RJ programmes. In such programmes, meeting the needs and rights of the victims seems to be of secondary importance. We then can wonder whether restorative justice is able to reach all its objectives including meeting the needs of the victims. Moreover, certain restorative programmes do not include victims but aim at restoration. It would hence be important to measure the satisfaction of victims with this type of programmes.
  - *Certain victims could exclude themselves from the process because they do not see themselves as enough "restorative":* in this context, it is important to emphasize that some RJ programmes – as some VAS programmes - adopt an "ideal image" of the victim. The "restorative victim" should be a victim being able to rationally and actively discuss his/her interests with the offender and/or the community. Moreover he/she should be able to "forgive". This may question whether the feelings of anger and indignation which the victims may feel, exclude them from all restorative programme as they seem to be incompatible with the process. We may however put forward that an efficient restorative

justice process should exactly take these legitimate emotions into consideration and should organise the programme whilst taking these variables into account. The victim should, in fact, be at the centre of the process in order for restorative justice to meet one of its objectives, namely to give back to the victim a place in the social reaction against what happened, contrary to the functioning of the traditional justice system. Thus, a good restorative justice programme does not demand from the victim to enter with a "restorative" state of mind. It is up to the programme itself to bring about this transformation. In this aim, an extensive preparation of the victim before the meeting could be necessary. This preparation could be done by/with a victim support service, which seems to be in the best position to deal with these types of situations.

On the basis of these findings, ideas can be suggested in order to overcome some of the obstacles.

Victim support can support and promote restorative justice, but not without conditions. Research usually indicates that in most RJ programmes the benefits for the victims are more important than the negative effects. However, evaluations also show that, in some cases, restorative justice can also lead to new damages for the victims. Hence in practice, the aim of promoting the needs of victims may be in conflict with the aim of preventing secondary victimisation. This dichotomy between promoting the needs and highlighting the risks is very significant in the framework of restorative justice programmes from the point of view of the interests of victims. Due to this dichotomy, it is important to implement initiatives allowing to reassure the victims and to allow them to make a well informed choice. Legal guarantees should also surround the participation of victims in restorative programmes. The victim support sector should hence actively ensure that restorative justice serves the interests of victims and – in doing so – create new possibilities for victims rather than new damages. Let us remember that the intervention of VAS services can serve to put in place a restorative justice system whilst taking the needs of victims into account. This can be done, for example, by pursuing the aim of reducing the risk of secondary victimisation for victims. However, it is necessary to emphasize that it will always be impossible to determine in advance what will be the result for an individual victim as each person reacts differently to what happened to them. Therefore, a close follow up of the victim situation could be valuable in some cases.

In Belgium, in 1994, the Minister of Justice put in place the National Forum for Victim Policy. The aim of this Forum was to improve the collaboration between the different authorities competent for VAS. It was an important tool as it strengthened the cooperation in the field and hence could aim at a certain consistency in the delivery of services to victims of crime. It was an important source of information and expertise in the field. However, this Forum does not exist any longer.

It is important to mention that members of this forum mostly considered that the rights of the victims were separated from the situation of the offenders. In this way, restorative justice programmes have never been amongst the main concerns of the Forum, even though Belgium witnesses an important development in the field of restorative justice. It is thus not surprising to read that at its start, restorative justice policies in Belgium - at least partly - were implemented in a punitive or rehabilitative framework, and that it was thus disconnected from the real interests of the victims to be involved in the implementation of this type of programmes. The Forum for Victim

Policy talked about restorative justice but did not envisioned it, in this context, as a model that would overarch victim policies. At the national policy level, restorative justice is not really considered in a complementary manner with victim support and assistance and hence not seen as a real opportunity for the victim. In conclusion, despite that victim support and restorative justice policies have at least partly common objectives, in certain aspects these two movements are being thought of as being separate. This can result in paradoxical situations in which the two fields find themselves in a conflict situation rather than cooperating for the benefit of victims. It must be mentioned, however, that contrary to the national level, at the local level cooperation between VAS and RJ programmes seem to develop much easier. Many RJ programmes at the level of the judicial district are managed by so-called steering committees which form partnerships between different relevant agencies, including victim support services.

Furthermore in Belgium, where many RJ programmes exist, some mediation programmes have been set up for others reasons than pure restorative purposes. The aim of the so-called programme “penal mediation” (1994) (diversion measure at the level of the public prosecutor's office) was for example to reduce feelings of insecurity and to combat petty criminality rather than to meet the needs of the victims. Another type of mediation which takes place in parallel to the justice system, “mediation for redress”, meets the interests of the victims to a greater extent. However, in terms of access to the process, significant inequalities between offenders and victims remain as, at least in the french speaking part of the country, 83% of the mediations take place on the initiative of the offender. The reason for this is that offenders are better informed about this type of process than victims due to the services they encounter during the judicial procedure, whereas this information is not necessarily given by the victim support services. Moreover, not all victims call upon this type of service. This strengthens the idea that mediation is more efficient for offenders. However, the inspiration for the model of "mediation for redress" comes from research in the field of victimology which revealed the weak position of the victim in the criminal procedures, and the obstacles they meet in obtaining compensation and attention for their immaterial needs.

In the Netherlands, policies are clearly geared towards victim support. As a result of this, restorative justice for a longer period has been somewhat forgotten by the system. Indeed, there was an important development of victim support initiatives and, conversely, a relatively limited development in the field of restorative justice. The punitive turn which can be noticed in the Netherlands nowadays is not enough to explain the limited reliance on restorative justice as some other rather punitive countries, such as Austria, do develop restorative justice programmes. However, developments in the Netherlands during last years have shown the viability of a model of victim-offender encounters, managed by a victim related organisation nation-wide. Also national policies in the Netherlands evolve much more in favour of RJ nowadays.

In Austria, in fact, policies are more offender-oriented. Austria is one of the pioneering countries in the development of victim-offender mediation. But this country was also late in developing alternative measures and sanctions, especially in the juvenile justice field. The structures implementing these programmes are quite close to the state, which results in the fact that mediations increasingly take place in a judicial context. Moreover, the practice is increasingly regulated in order to protect mainly the rights of the victims. But this bureaucratisation brings

about difficulties to convince people about the possible alternative nature of restorative justice. The victims also see the process as being mandatory. In the end the development in favour of victims remains unbalanced compared to the Netherlands, except for the Austrian movement related to domestic violence against women.

Finland presents a rather neutral position in relation to the two fields which interest us here. It has rather progressive policies whose political intentions are to have a criminal justice system that is close to the population, with many referrals to victim-offender mediation and the participation of civil society and volunteers in restorative programmes. But considerable efforts are also made to meet the needs of victims. We can nevertheless observe that even though legislation exists, and that it gives many rights to victims, this is not always sufficient in practice. The sensitivity to the fate of victims in fact depends strongly on the expertise of each professional.

4 From theory to practice: some conclusive reflections and perspectives

4.1 Conclusive reflections…

In theory, VAS and RJ can be seen as both responding to various needs of a large category of victims. Both kinds of programmes can thus generally be proposed to victims. However, a specific evaluation of the needs and willingness of every victim to participate to one or another programme should always be done cautiously since they can vary according to their personal and social position and situation. Both VAS and RJ programmes seems to be able to fulfil the victims' needs at a certain level or at different moments in time. A complementary strategy of intervention should thus be valuable in order to implement a better answer to crime victims.

In practice, however we have noticed tensions between these two fields. Tensions can be present at various levels, depending on the situation in a given country or region (structural, institutional, local …). It is important to emphasize that sometimes these tensions can be related to extreme positions taking place in a more ideological and political context.

As we have seen, some VAS services show a reluctance to the participation of victims in RJ programmes. Also, some members of the VAS movement – at the extreme - and some politicians consider the rights of victims as opposed to those of offenders and advocate a more punitive approach to crime. Therefore, in practice it can indeed be difficult to integrate VAS policies and RJ policies. This school of thought can hence not move towards a complementarity between these two fields because of a very "protective" attitude towards victims on the one hand, and the strong attention that RJ may give to the rehabilitation of the offender on the other hand.

When in theory the restorative justice movement potentially addresses offenders, victims as well as the community equally, the programmes can turn out to be rather "pro-offender". Despite the place which is supposed to be given to the victims, in some programmes they in fact remain at the periphery. This can be explained by the fact that in general the projects are built around the situation of the offender. This can, in most cases, in turn be explained by the institutional context in which these initiatives are realised (juvenile protection, probation, prison, etc.). In some countries or regions, the victim concerns rather remain in the background as compared to the concerns with the resocialisation of the offender. Yet, research shows that even programmes initially set up for

the benefit of offenders oftentimes result in benefits for the victim. Also, some victims take a pro-social attitude and are precisely in favour of educational or resocialisation effects on the (juvenile) offender. Moreover, the different positions of mediation towards the criminal justice system influence the perception of the victims of the criminal justice system and of restorative justice measures. It is understandable that victims seem to be more satisfied when the restorative programme intervenes in parallel with the procedure than when it is a diversion measure. This "inequality" between victim and offender in the framework of restorative programmes is particularly reflected in who can initiate the restorative process. This type of process is often not set in motion by the victim. It is often initiated by services that support offenders, or the offender him/herself or his/her lawyer, or oftentimes on the initiative of the magistrates themselves. There might be nothing wrong with this offender based initiation of RJ processes, but victims should be able to initiate the restorative process as well. However, they do not always have this possibility. If restorative justice wants to be beneficial for victims, it is only normal that they should be able to initiate the process and have the same right of access as offenders. The victim support services could play an important role in providing information and in establishing the first contact, on the condition that the (legal) framework allows such a practice. A number of guarantees should nevertheless be provided to victims in order to initiate such provision, such as an adequate preparation of the stakeholders. These conditions will be dealt with in the third point.

At a broader societal level, we might witness the existence of movements representing a dilemma between two approaches and advocating at the extreme, on the one hand, for an increasingly strong request in support of criminalisation and of demands for financial compensation, and on the other hand, for the promotion of the creation of communicating vessels between the criminal justice system and the community which opens new possibilities for the development of restorative justice programmes. Though, let us remember that in a reparative conception of restorative justice, dialogical programmes (emphasizing the dialogue between the victim, the offender and the community) as well as unilateral programmes (as VAS programmes for example) are part of the model in order to offer a better answer to victims' needs.

4.2 Perspectives: some words about the evaluation …

Restorative justice oftentimes uses its comparison with the traditional justice system in order to evaluate its operation. However, if the restoration of the victim is seen as one of the main aims of restorative programmes, we should take into account other references. Restorative programmes should be evaluated on the same conditions as other measures designed for the support of victims. In particular the extent to which the psychological/emotional needs of victims are met in restorative programmes should be compared to other measures set up for victims. Experiments are needed to determine whether restorative justice programmes are more or less efficient than other alternatives that respond to similar needs. This, for example, implies a broader evaluation of the psychological well-being of victims than the sole issue of satisfaction, which is the central victim-related issue in evaluations of restorative justice. Indeed, satisfaction is, for example, not necessarily linked to a positive effect on well-being.

In general there is a lack of research that would allow for a comparison between restorative justice measures and other measures aimed at victims.

There is also too little research that questions which are the effects on victims who have refused to participate in a restorative programme. This would in particular allow the restorative programmes to be adapted to the needs and expectations of victims.

It would be beneficial to set up more evaluation studying these two fields together. This evaluation should go hand in hand with a process to raise awareness of the actors in both the victim support assistance and restorative justice fields as we can see that once the actors are informed, the complementarity between victim support and restorative justice is more likely to work.

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Some overall recommendations (list of things to do) to implement restorative justice programmes and victim support programmes in a complementary way

We share the view that the restorative justice field and the field of victim support and assistance develop complementary strategies that offer different answers to victims in function of their different needs. Indeed, in view of the variability of the experiences that victims may have, we consider that the offer should be as diversified as possible in order to reach as many victims as possible.

1 How to set up a programme?

The implementation of any victim-oriented programme, including restorative justice, should involve:

a) Identifying the main actors in the field and in the region where the programme will be set up (prosecutors, judges, community-based organisations, NGO's, medical and health services, etc.).

b) Investing considerable time in getting to know these actors and in gathering their views and ideas about a potential new programme. In Belgium, for example, communication with all actors took place for at least one year before implementing "mediation for redress" at a local level.

c) Defining collaboration protocols (including referral procedures) with these organisations and set up structures for permanent coordination (such as monthly or annual meetings).

d) Assessing and training different actors of the two fields. Victim support services could, for example, intervene in the training of mediators in order to make them aware of how to deal with victims.

e) Organising follow-up and evaluation in order to adapt the programme, if needed, in terms of target groups, etc.

2 How to refer cases and how to approach victims?

2.1 In the case of restorative justice

a) The referral of cases necessarily depends on national legislation. Some countries only allow referrals to restorative justice from judicial authorities. Others allow self-referrals as well. In the experience of Belgium, where all victims are entitled to ask for mediation at any stage of the procedure, the "automatic information" has proven to be a useful instrument. This means that victims should be informed about restorative justice possibilities as from the notification with the police. This way, victims can ask for it at any moment. This is in line with the 2012 EU Directive which states that all victims should be informed about the alternatives that exist for their case, including restorative justice. It seems important that victims are informed about the offer of restorative justice at different moment throughout the judicial procedure, including the execution stage of the sentence.

b) Different studies suggest that victims do not have a specific preference for either a pro-active or a passive offer for restorative justice. What matters is that they get the information. What is important is that so far there is no evidence that suggests that victims undergo secondary victimisation when they refuse to participate in restorative justice.

2.2 In the case of victim support

The question of how to best approach the victim arises. There are two possible approaches which are *a priori* opposed to each other. On the one hand a protective model exists which seeks first of all to protect the victims against a possible risk of secondary victimisation. In this context no information is provided to the victim, except when the victim asks him/herself to participate in a restorative process. The second so-called "pro-active" model aims at informing victims of all different options before they make a choice. It thus aims at informing the victims in a systematic way. As we could see in chapter 2, passive invitations do not work very well. Automatic referrals, such as the victim being contacted by victim support directly after receiving their contact details from the police, seems to work better. This type of referral does of course not work for victims who do not report the crime to the police. This would suggest that victim support needs to adopt a more pro-active approach at the level of the community. In this case, victim support has to rely on referrals by family members, friends or services in the community. Let us nevertheless point out that these two models should not be seen in a dichotomous manner with watertight boundaries.

3 (Contra-)indications for making a restorative offer to a victim?

- The seriousness of the offence: restorative justice obtains very good results when the offences are of a certain seriousness. But, according to certain victims, the seriousness may represent a difficulty. According to many of them, the offer should be formulated independently of the type of crime. For others, the seriousness of the offence is a contra-indication for proposing a victim to go to restorative justice. Moreover, the latter exclude murder and sexual aggression automatically from restorative justice programmes. For some victims, the offences as a result of which an offer is made should be minor. But for others, violent crimes are nevertheless considered as being minor. This proves the subjective nature of the evaluation of the seriousness. The types of crimes can – by themselves – not limit the restorative offer to be made as the injury is not necessarily linked to the legal qualification of the crime.
- The harm: only few victims consider that an offer for a restorative justice programme should not be made on behalf of the harm suffered. Even if the emotions run very high, it is useful to make a restorative offer as it may help to face these emotions.
- The victim's age: in the framework of a study in which victims who participated in a restorative programme were interviewed, a victim was of the opinion that elderly people do not have an interest in a restorative justice offer. However, this point of view is not shared by all the victims.
- The offender's age: the view is that this type of intervention is particularly well adapted to deal with cases involving juvenile offenders as it may encourage them to get back on the right track. This is considered to be more difficult to achieve with adults as they are *a priori* more formed. This, however, does not mean that it is not interesting to foresee this type of intervention for adult offenders.
- The relation between the offender and the victim: the fact that victim and offender know each other may be useful in restorative interventions. Different grounds may in fact lead to consider this type of programmes in this situation. The understanding that exists already on beforehand of each other's situation can make the meeting easier. But the fact that offender and victim will also be obliged to interact in the future could contribute to reconciliation. A prior relation between offender and victim may, on the other hand, also affect the process negatively.

4 Timing and flexibility of the offer

There is also information indicating that victim support and restorative justice may be intervening at different times in the restoration process, which may immediately also refer to different types of victims. For example, as discussed in chapter 2, victim support tends to be implemented on the front line, through the provision of information soon after the victim has reported the offence to the police. Restorative justice, on the other hand, tends to be refused at this stage because victims may still feel angry towards the offender. Especially in the case of more serious crimes, it seems that the chances for the mediation offer to be accepted increase when some time has passed already, at a time when contact of the victim with victim support may already have taken place (although they might still benefit from specialised services).

There is nevertheless no agreement between the victims as regards the time when the offer should be made. This notion of "time" depends on each individual person. A victim may only be ready at a later moment than when the offer is made. The offer may, for example, also be made too late for the victim. The fact that it is impossible to determine the moment at which the offer should be made implies that it should be made in a flexible manner in order to meet the needs of the persons. It is also important to leave the victim some time to reflect about the offer before deciding to enter (or not) a process.

The most important thing is that victims are informed properly about their options so that they can decide when to approach a specific service (victim support or restorative justice). This information should be received as early as possible. This means to inform victims through:
a) the police;
b) other relevant referral institutions, e.g. medical doctors or hospitals.

Let us finally underline that this flexibility relates to the variety of restorative programmes, but also applies within a programme. Victims should, for example, be able to decide whether to participate in a direct or indirect process in a restorative programme.

5 Inform the parties and ensure support throughout the process

The actors in the field should ensure that the victims get the support and information needed in order to overcome the practical and psychological difficulties. It is therefore important to ensure that victim support services are easily accessible for all victims, independently of their situation. This also implies making sure that good quality restorative justice is available by allowing all victims to have access to a form of compensation and reparation, without forcing them to enter a RJ process in the narrow sense. Interpersonal provision of information, which is more dynamic than written and passive information, is to be preferred as the latter allows, amongst others, for less involvement of the victim and for a more limited comprehension of the process. Both the context and the way in which the proposal is formulated are very important.

The offender, on his side, needs to be prepared in order to deal with the attitude of the victim so that he/she can react in an appropriate way in order to minimise the risk of secondary victimisation. The victim also needs to be prepared in order to agree on expectations, needs, etc.

During the process itself, the victim should also be supported and this from the preparation phase until an after-meeting when the encounter took place. This support could be provided by a victim support service, sensitive to the victim's fate.

6 Work related values

It is important:

a) that social actors believe in the social and individual benefits of involving victims, such as increasing the well-being of the individual and his/her environment in general;
b) to realise that most victims are not "ideal victims" as described in literature (or as our common sense says). There are victims who experience anger, feelings of revenge, who are mainly interested in financial compensation, or who have contributed actively to the crime (e.g. fights). But this does not change the fact that they experienced harm and that their experiences and wishes are valid;
c) to realise that most victims and offenders may know each other, and hence may prefer an alternative response to their problem, away from the confrontational logic imposed by the criminal justice system;
d) to realise that victims therefore require different types of services which may respond to different needs.

7 Assessment of programmes

It is clear that there is a lack of research in terms of what is more effective and why, especially regarding victim support. Victim support and restorative justice programmes should work closer together with research departments and academic institutes. It is important to consider researchers as allies that can be trusted in order to develop the field further. Calls for research and training proposals of the European Commission may be an important source of funding, in which collaboration between organisations (practitioners and academics from different countries) is actually encouraged.

At the same time, policy makers should be aware of the efforts made so far in the academic field and should be willing to incorporate this accumulated knowledge in order to develop changes and new ideas.

8 Recommendations by international organisations

Regarding victim policies, the UN recommends a comprehensive strategy, in which the first step is to create a working group with representatives of all relevant bodies.

The UN also recommends:

- To carry out needs assessment studies, including victimisation studies.
- Assessing the shortfall between needs and provision of services, including the identification of obstacles to access to justice.

- Elaborating proposals for the treatment of victims in the immediate and long term after the crime.

In terms of victim assistance the UN recommends:

- The starting point for the development of victim assistance programmes has been the gap between the demands and needs on the one hand, and the availability of services on the other. For this, not only data from the police should be taken into account. Victimisation surveys are also needed in order to learn about the needs of victims.

- Once the need for a service has been defined, the next step is to define the goal of the service and to ensure that it is well organised, and has support of host agencies.

- In the planning, the views and the experiences of representatives from various sectors of society should be taken into consideration.

Council of Europe Recommendation Rec(2006)8 recommends:
States should take steps to ensure that the work of services offering assistance to victims is co-ordinated and that:

- A comprehensive range of services is available and accessible.

- Standards of good practices for services offering help to victims are prepared and maintained.

- Appropriate training is provided and co-ordinated.

- Services have access to government for consultation on proposed policies and legislation.

This coordination could be provided by a single national organisation or by some other means.

Coordination between RJ programmes and victim support programmes is therefore a key issue in the development of a policy responding to the needs of the victims.

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Collection des rapports et notes de recherche
Collectie van onderzoeksrapporten en onderzoeksnota's

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