



Strasbourg, 30 August 2017
PC-CP/docs 2017/PC-CP(2017) 6_E REV 3

PC-CP (2017) 6 rev 3

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Council for Penological Co-operation
(PC-CP)

**Draft Recommendation CM/Rec (2018) XX of the Committee of
Ministers to member States concerning restorative justice
in criminal matters**

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**COUNCIL OF EUROPE
COMMITTEE OF MINISTERS**

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restorative justice in criminal matters**

*(Adopted by the Committee of Ministers on X at the X meeting of the
Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Noting the growing interest in restorative justice in its member States;

Recognising the potential benefits of using restorative justice with respect to criminal justice systems;

Noting the developments in member States in the use of restorative justice as a flexible, responsive, problem-solving and participatory process;

Recognising that restorative justice can complement traditional criminal proceedings or be used as an alternative to them;

Considering the need to enhance the participation of stakeholders, including the victim and the offender, other affected parties, and the wider community, in addressing and repairing the harm caused by crime;

Recognising restorative justice as a method through which these parties' needs and interests can be identified and satisfied in a balanced, just and collaborative manner;

Recognising the legitimate interest of victims to have a stronger voice regarding the response to their victimisation, to communicate with the offender and to obtain an apology, reparation or satisfaction within the justice process;

Considering the importance of encouraging the offenders' sense of responsibility and offering them opportunities to make amends, which may further their reintegration, enable redress and mutual understanding, and encourage desistance from crime;

Recognising that restorative justice may increase awareness of the important role of individuals and communities in preventing and responding to crime and resolving its associated conflicts, thus encouraging more constructive, rather than repressive, criminal justice responses;

Recognising that delivering restorative justice requires specific skills and calls for codes of practice and accredited training;

Recognising the growing body of research evidence which indicates the effectiveness of restorative justice on a variety of metrics, including victim recovery, offender desistance and participant satisfaction;

Recognising the possible damage to individuals and to societies of over-criminalisation and the overuse of punitive criminal penalties, particularly for vulnerable or socially excluded groups;

Recognising that crime involves a violation of individuals' rights and relationships, the repairing of which can be neglected if responses to crime focus exclusively on law-breaking and punishment;

Considering the substantial contribution which can be made by non-governmental organisations and local communities to restoring peace and achieving social harmony and justice, and the need to co-ordinate the efforts of public and private initiatives;

Having regard to the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Bearing in mind the European Convention on Human Rights and Fundamental Freedoms, the European Convention on the Exercise of Children's Rights and Recommendations: No. R (85) 11 on the position of the victim in the framework of criminal law and procedure, No. R (87) 18 concerning the simplification of criminal justice, No. R (87) 20 on social reactions to juvenile delinquency, No. R (88) 6 on social reactions to juvenile delinquency among young people coming from migrant families, No. R (95) 12 on the management of criminal justice, No. R (98) 1 on family mediation, No. R (99) 19 concerning mediation in penal matters, No. R (2006) 2 on the European Prison Rules, No. R (2006) 8 on assistance to victims, CM/Rec (2010) 1 on the Council of Europe Probation Rules and No. R (2017) 3 on the European Rules on Community Sanctions and Measures;

Bearing in mind document CEPEJ (2007) 13 by the European Commission for the Efficiency of Justice which establishes guidelines for a better implementation of Recommendation (99) 19 concerning mediation in penal matters;

Bearing in mind Directive 2012/29/EU of the European Parliament and the Council of the European Union on establishing minimum standards on the rights, support and protection of victims of crime;

Bearing in mind the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century (10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10-17 April 2000, A/CONF. 184/4/Rev. 3), the ECOSOC Resolution 2002/12 on the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, the Handbook on Restorative Justice Programmes published by the United Nations Office on Drugs and Crime, and Rebuilding Community Connections - Mediation and Restorative Justice in Europe, published by the Council of Europe;

Recommends that the governments of member States take into account the principles set out in the appendix to this Recommendation when developing restorative justice, and give the widest possible circulation to this text among the relevant national authorities and agencies and, in the first place, judges, prosecutors, police, prison services, probation services, youth justice services, victim support services and restorative justice services.

Appendix to Recommendation No. R (XX) X

I. Scope of the Recommendation

1. This Recommendation aims to encourage member States to develop and use restorative justice with respect to their criminal justice systems. It promotes standards for the use of restorative justice in the context of the formal criminal procedure which safeguard participants' rights and maximise its effectiveness in meeting participants' needs. It also aims to encourage the development of innovative restorative approaches by judicial authorities, law enforcement agencies and restorative justice services, some of which may fall outside of the formal criminal procedure.
2. This Recommendation is addressed to all public and private agencies which operate in the domain of criminal justice, and which deliver or refer cases for restorative justice, or which may otherwise be able to apply restorative justice and its principles to their work.

II. Definitions and general operating principles

3. 'Restorative justice' refers to any process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence through the help of a trained and impartial third party (hereinafter: the 'facilitator').
4. Restorative justice often takes the form of a dialogue (whether direct or indirect) between the victim and the offender, and can also involve, where appropriate, other persons directly or indirectly affected by crime (hereinafter: 'the parties'). This includes supporters of victims and offenders, relevant professionals and members or representatives of affected communities.
5. Depending on the country in which it is being used and the manner in which it is administered, restorative justice may be referred to as Victim-Offender Mediation (or Penal Mediation/Mediation in Penal Matters), Restorative Conferencing, Family Group Conferencing, Sentencing Circles, Peace-making Circles, Circle Processes or Shuttle Mediation.
6. Restorative justice can be used at any stage of the criminal justice process. It may be associated with diversion from prosecution, used in conjunction with a police disposal, occur parallel to prosecution, take place in between conviction and sentencing, constitute part of a sentence, or happen after the sentence has been passed or completed.
7. An important distinction is whether the process will affect judicial decisions, as when discontinuation of prosecution depends on an acceptable settlement, or when the agreement is put to court as a recommended order or sentence. The need for judicial supervision is greater if restorative justice will have an impact on such decisions.
8. Practices which do not involve a dialogue between victims and offenders may be restorative if they adhere closely to many of the principles of restorative justice (see Section VII).
9. Restorative justice can be used by judicial authorities, law enforcement agencies and restorative justice services outside of the formal criminal justice procedures (see Section VII). In such cases, it can be used more flexibly than when its use relates to the formal criminal procedure.
10. 'Judicial authorities' refers to judges, courts and public prosecutors.
11. 'Law enforcement agencies' refers to the police and to prison, probation and youth justice services.
12. 'Restorative justice services' refers to any organisation (private or public) which delivers restorative justice in the context of criminal justice.

III. Basic principles of restorative justice

13. The core principles of restorative justice are that those with a stake in the response to an offence should be enabled to participate actively in its resolution, and that these responses should be primarily oriented towards addressing and repairing the harm which crime causes to individuals, relationships and wider society.

14. Other key restorative justice principles include: voluntariness; deliberative, respectful dialogue; equal concern for the needs and interests of those involved; procedural fairness; avoiding domination; collective, consensus-based agreement; and a focus on reparation, reintegration and achieving mutual understanding. These principles can be used as a framework with which to underpin broader reforms to criminal justice.
15. Restorative justice should not be designed or delivered to promote the interests of either the victim or offender ahead of each other. Rather, it provides a neutral space where all parties are encouraged and supported to express their needs and to have these satisfied as far as possible.
16. Restorative justice should only take place if the parties freely consent, having been fully informed in advance about the nature of the process and its possible outcomes and implications. The parties should be able to withdraw their consent at any time during the process.
17. Restorative justice should be performed *in camera*. Discussions in restorative justice are confidential and may not be used subsequently, except with the agreement of the parties concerned.
18. Restorative justice should be a generally available service. The type, seriousness or geographical location of the offence should not, on their own, preclude restorative justice from being offered to victims and offenders.
19. Victims and offenders should have the right to access restorative justice services at all stages of the criminal justice process. They should be provided with sufficient information to determine whether or not they wish to participate. Referrals can also be made by judicial authorities or law enforcement agencies at any point in the criminal justice process.
20. Restorative justice services should be given sufficient autonomy in relation to the criminal justice system. Balance should be preserved between the need for these services to have autonomy and the need to ensure that standards for practice are adhered to.

IV. Legal basis for restorative justice

21. Legislation should provide for, support and encourage the use of restorative justice. Statutory guidance is necessary where restorative justice is ordered by the court, or where it is otherwise used in a way which impacts, or which may impact, upon court proceedings.
22. Policies should be developed which govern the use of restorative justice. These should, in particular, address the procedures for the systematic referral of cases to restorative justice services and the handling of cases following restorative justice.
23. Procedural safeguards must be applied to restorative justice; in particular, the parties should have the right to legal assistance and, where necessary, to translation or interpretation.
24. Where restorative justice involves juveniles, their parents or legal guardians have the right to attend any proceedings in order to ensure that the juvenile's rights are upheld. Any special regulations and legal safeguards governing juveniles' participation in legal proceedings should also be applied to their participation in restorative justice.

V. The operation of criminal justice in relation to restorative justice

25. Before agreeing to restorative justice, the parties should be fully informed of their rights, the nature of the restorative justice process, the possible consequences of their decision to participate, and the details of any grievance procedures.
26. No person should be induced by unfair means to participate in restorative justice, which should only take place with the free and informed consent of all parties.
27. Restorative justice should not proceed with parties who are not capable of understanding the meaning of the process. Restorative justice services should work to ensure that they are as inclusive as possible; a degree of flexibility should be used in order to enable this.

28. Criminal justice authorities and law enforcement agencies should create the conditions, procedures and infrastructure necessary to refer cases to restorative justice services systematically. Individual practitioners with responsibility for making these referrals should contact restorative justice services prior to making a referral if they are unsure whether disparities with respect to the parties' age, maturity, intellectual capacity or other factors may preclude the use of restorative justice.
29. Restorative justice services must be afforded sufficient time and resources to undertake adequate levels of preparation, risk assessment and follow-up work with the parties.
30. The basic facts of a case should normally be acknowledged by the parties as a basis for starting restorative justice. Participation in restorative justice should not be used as evidence of admission of guilt in subsequent legal proceedings.
31. A decision to refer a criminal case to restorative justice, where this is taken with a view to discontinuing legal proceedings in the event that an agreement is reached, should be accompanied by a reasonable time-limit within which the judicial authorities should be informed of the state of the restorative justice process.
32. Where a case is referred to restorative justice by the court in advance of conviction or sentencing decisions, the assessment of the outcome of a restorative justice process should be reserved to the judicial authorities.
33. Before restorative justice starts, the facilitator should be informed of all relevant facts of the case and be provided with the necessary information by the competent judicial authorities or law enforcement agencies.
34. Decisions to discontinue prosecutions or court proceedings on the basis of restorative justice agreements should have the same status as judicial decisions or judgments and should preclude criminal proceedings in respect of the same facts (*ne bis in idem*).
35. When a case is referred back to the judicial authorities without an agreement between the parties or after failure to implement such an agreement, the decision as to how to proceed should be taken without delay.

VI. The operation of restorative justice services

36. Restorative justice services should be governed by recognised standards. Standards of competence and ethical rules, and procedures for the selection, training, support and assessment of facilitators, should be developed.
37. Restorative justice services and restorative justice training providers should be overseen by a competent body.
38. Restorative justice services should regularly monitor the work of their facilitators to ensure that standards are being adhered to and that practices are being delivered safely and effectively.
39. Restorative justice services should develop appropriate data recording systems which enable them to collect detailed information on the cases they deliver. Anonymised data should be collated nationally by a competent body, and made available for the purpose of research and evaluation.
40. Facilitators should be recruited from all sections of society and should generally possess good understanding of local cultures and communities.
41. Facilitators should be able to demonstrate sound judgement and the interpersonal skills necessary to deliver restorative justice effectively.
42. Facilitators should receive initial training before delivering restorative justice, as well as on-going, in-service training. Their training should provide them with a high level of competence, taking into account conflict resolution skills, the specific requirements of working with victims, offenders and vulnerable persons, and basic knowledge of the criminal justice system.
43. Facilitators should be experienced and receive advanced training before delivering restorative justice in sensitive, complex or serious cases.

44. Facilitators' managers should receive case supervision and service management training which is specific to restorative justice delivery.
45. Training providers should ensure that their materials and training approaches correspond with up-to-date evidence on effective training and facilitation.
46. Restorative justice should be performed in an impartial manner, based on the facts of the case and on the needs and interests of the parties. The facilitator should always respect the dignity of the parties and ensure that they act with respect towards each other. Domination of the process by one party or by the facilitator should be avoided, and the process should be delivered with equal concern for all parties.
47. Restorative justice services are responsible for providing a safe and comfortable environment for the restorative justice process. The facilitator should take sufficient time to prepare the parties for their participation, and be sensitive to any of the parties' vulnerabilities.
48. Restorative justice should be carried out efficiently, but at a pace that is manageable for the parties. Sensitive, complex and serious cases may require lengthy preparation and follow-up, and the parties may also need to be referred to other services, such as treatment for trauma, drug abuse or addiction.
49. Notwithstanding the principle of confidentiality, the facilitator should convey information about imminent, serious crimes which may come to light in the course of restorative justice to the competent authorities.
50. Agreements should be arrived at voluntarily by the parties. They should only contain reasonable, achievable and proportionate actions.
51. Agreements do not have to include tangible outcomes – parties are free to agree that the dialogue sufficiently satisfied their needs and interests.
52. As far as possible, agreements should be based on the parties' own ideas. Facilitators should only intervene in the parties' agreements where they are asked by the parties to do so, or where aspects of their agreements would be clearly disproportionate, unrealistic or unfair, in which case they should explain and record their reasons for doing so.
53. The facilitator should report to the relevant judicial authorities or law enforcement agencies on the steps taken and on the outcome(s) of restorative justice. The facilitator's report should not reveal the contents of discussions between the parties, nor express any judgment on the parties' behaviour during restorative justice. Judicial authorities should not request that facilitators reveal this confidential information.

VII. Continuing development of restorative justice

54. Member states should provide adequate human and financial resources to enable restorative justice to be used and developed in the manner outlined in this Recommendation. National structures should be established in order to support and coordinate policies and developments in the field of restorative justice in a coherent and sustainable way.
55. There should be regular consultation between judicial authorities, law enforcement agencies, restorative justice services and groups acting on behalf of victims, offenders and communities, in order to enable the development of a common understanding of the meaning and purpose of restorative justice.
56. Judicial authorities, law enforcement agencies and restorative justice services should be encouraged and supported to engage with their local communities, in order to inform them about the use of restorative justice and to include them in the process where possible.
57. Staff and managers from judicial authorities and law enforcement agencies should receive training in conflict resolution and restorative justice in order to enable them to use these skills in the course of their day-to-day work.
58. Where offenders are sentenced to supervision and assistance by probation services, restorative justice can take place prior or concurrent to sentence planning work. This would allow restorative justice agreements to be considered by probation officers when determining sentence plans.
59. Restorative justice can be used outside of the formal criminal procedure. For example, it can be used where there is a conflict between citizens and police officers, between prisoners and prison officers,

or between probation workers and the offenders they supervise. It can also be used within prisons where there is a conflict between prisoners, or within judicial authorities and law enforcement agencies where there is a conflict between staff.

60. Many interventions which do not involve dialogue between the victim and offender may adhere to restorative justice principles, including innovative approaches to reparation, achieving mutual understanding or reconciliation, victim recovery and offender reintegration. For example, community reparation schemes, reparation boards, direct victim restitution, victim and witness support schemes, victim support circles, therapeutic communities, victim awareness courses, prisoner education, problem-solving courts, Circles of Support and Accountability, offender reintegration ceremonies, and projects involving offenders and their families or other victims of crime, can all be delivered restoratively.
61. Some types of restorative justice - most notably, Circle Processes - can be used proactively by judicial authorities and law enforcement agencies. For example, Circle Processes could be used to build and maintain relationships among staff within an organisation, between police and members of the community, or among prisoners and/or prison officers within a prison. This can aid in the building of trust, respect and social capital between or within these groups.
62. Restorative justice principles can be applied to the internal operations and management of the criminal justice system in order to build a restorative culture within judicial authorities and law enforcement agencies. Circle Process can be used to build relationships between staff, to make or consult staff on policy decisions, and in other areas of staff management and organisational decision-making.
63. Notwithstanding the need for restorative justice services to be autonomous in relation to the criminal justice system, restorative justice services, judicial authorities, law enforcement agencies and other relevant public services should engage with each other at the local level in order to promote, develop and coordinate the use and development of restorative justice in their area.
64. Judicial authorities and law enforcement agencies should appoint a member of staff with formal responsibilities for promoting and coordinating the use of restorative justice by and within that organisation. This person could also be responsible for liaising with other local organisations and communities on the use of restorative justice.
65. Member States should cooperate and assist each other in their development of restorative justice. This should involve the sharing of information on the use, development and impact of restorative justice, and the co-production of policies, research, training and innovative approaches. Member States (or local authorities and relevant organisations within member States) with well-developed restorative justice policies and practices should share information, materials and expertise with other member States, or with local authorities and relevant organisations therein.
66. Governments, judicial authorities, law enforcement agencies and restorative justice services should undertake promotional activities in order to build social support for, and awareness of, restorative justice.
67. Member States should promote, assist and enable research on restorative justice and evaluate any schemes or projects which they implement or fund. Restorative justice services, whether private or public, should allow and assist in the independent evaluation of their service.
68. This Recommendation should be reconsidered in the light of any significant developments in the use of restorative justice in member States and, if necessary, revised accordingly.