



Implementing  
victim-oriented reform of the criminal  
justice system in the European Union



## Practice sheet on RESTORATIVE JUSTICE

This document includes a series of concrete ideas on the legal and practical implementation of Article 12 of the Victims' Directive, and not only, concerning *restorative justice*.

In this order, below you will find:

1. Restorative Justice in French legislation
2. Restorative Justice in Belgian legislation
3. Access to mediation in Poland
4. Access to mediation in Belgium
5. Informative leaflet in Czech Republic
6. Informative website in Denmark
7. Cooperation practices in Belgium
8. Inclusion criteria in Greece



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## 1. Restorative Justice in French legislation<sup>1</sup>

Restorative justice has been integrated in French legislation through the law 2014-896, of 15 August 2014, concerning the individualisation of penalties and strengthening the effectiveness of criminal sanctions. It describes different changes in the French criminal code. Among others, Article 10,1 of the French criminal code includes information about restorative justice in terms of mentioning some criteria for having access to the process, defining the practice, and listing legal safeguards to initiate a safe process.

Restorative justice is defined as *'any measure allowing a victim as well as offender to participate actively in the resolution of difficulties arising from the offense, including the repartition of damages of any kind resulting from its commission.'*

**Access to restorative justice** is provided at all stages of criminal proceedings, including during the execution of the sentence, and as far as both the victim and the offender have recognised the facts of the offense.

**Legal safeguards** include:

- Proper information and informed consent: restorative justice *'can only occur when the victim and the offender received comprehensive information about it and have expressly consented to participate'*;
- The neutral third party: restorative justice *'is implemented by an independent party trained for this purpose under the control of the judicial authority or, at the request of the latter, of the prison administration'*;
- The confidentiality of the process: restorative justice *'is confidential, unless the parties otherwise agree, and except where a higher interest linked to the need to prevent or repress offenses justifies the fact that information about the procedures is brought to the knowledge of the prosecutor.'*

Despite the fact that restorative justice was integrated in the French criminal code in 2014, practitioners are still waiting for the circular including implementation measures for restorative justice practices. Consequently, the presence of the term 'restorative justice' in the law does not grant that practices are well-established.

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<sup>1</sup> More information can be found on two volumes by Prof. Robert Cario (available in French only): *'Victimologie. De l'effraction du lien intersubjectif à la restauration sociale'* (2012) and *'Droit(s) des victims. De l'oubli à la reconnaissance'* (2015).



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## 2. Restorative Justice in Belgian legislation

Three Belgian laws were identified as relevant for restorative justice practices to take place. The first one may not be considered 'restorative justice' as such, since this [is still offender-oriented and state-initiated](#). With this law a new article was inserted into the Criminal Procedure Code, on 10 February 1994. With Article 216ter, public prosecutors have the possibility to suggest offenders to repair the damage caused by the offense and provide evidence for such reparation. A possible requirement is to meet the victim and find an arrangement with him/her. Some criteria are needed in order to be qualified for this meeting to take place:

- The offender is older than 18 years old and recognises the responsibility for the crime;
- The public prosecutor considers the case suitable for penal mediation and not punishable with more than two years sentence;
- The offender is willing to cooperate and pay eventual costs (procedural costs or compensation), if needed.

The meeting is 'mediated' by the public prosecutor or other civil servants from the house of justice. The public prosecutor can still decide to continue or dismiss the prosecution. The involvement of the victim in this sort of 'restorative justice practice' is minimal.

The second is from June, 22 of 2005: a law introduced in the Criminal Procedure Code the possibility to offer [mediation during all stages of criminal proceedings](#), without any criteria excluding cases from mediation to take place. The definition of mediation, inspired by the Council of Europe Recommendation No. R. (99) 19 concerning mediation in penal matters, is: *'Mediation is a process that allows people involved in a conflict, if they agree voluntarily, to actively participate and in full confidentiality in resolving the difficulties that arise from a criminal offence, with the help of a neutral third person and based on a certain methodology. The goal of mediation is to facilitate communication and to help parties to by themselves come to an agreement concerning conciliation and restoration'* (Art. 3ter of the CCP). This mediation process runs in parallel to criminal proceedings; its results, or possible agreement, are not automatically communicated to the judge, but parties may decide if they want to share some information with the judge and, if this is the case, the judge decides to take this information into consideration in its final decision.

A last law concerns the [possibility of mediation and conferencing for minor offenders who committed a crime](#) (Laws of 15 May and 13 June 2006). During the conference, the minor, his/her parents, the victim and their support people meet in presence of a facilitator. The public prosecutor should propose



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mediation in all suitable cases where the minor offender has been identified and all parties voluntarily agreed to meet. If the public prosecutor does not do so, he/she is obliged to justify this choice. Once the mediation is over, the case may be dismissed, unless the youth judge decides differently to send the case to court. At the court level, the youth judge can still make the offer of mediation or conferencing. The youth judge must take into account the positive result of the mediation or conference in decision-making.

Concerning the [safeguards for protecting victims during a restorative justice process](#), the principle of confidentiality is safeguarded by Article 553 in the Belgian Criminal Procedure Code:

- All documents and communications disclosed during the mediation are confidential, unless parties agreed differently in their communications with criminal justice authorities;
- These documents and communications cannot be used as evidence during criminal proceedings;
- The mediator cannot be called to testimony as a witness during criminal proceedings.

Concerning the mediator's role, Article 555 of the Criminal Procedure Code on [professional secrecy](#) applies.



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### 3. Access to mediation in Poland

Access to mediation in Poland is regulated by Article 23 of the Criminal Procedure Code.

The referral happens in court where, with the consent of all parties, the case is referred to the authorised mediation services.

The authorised mediators cannot be professionally active judges, public prosecutors, assistants or trainees in these professions. Mediators have access to the case files.

Mediation processes cannot take longer than a month (excluding the preparatory stage). The whole process is held in an unbiased and confidential manner, with attention on the voluntariness of the parties involved.

A report, signed by the parties and the mediator, should include the results and agreements of the process.

According to Article 178 of the Criminal Procedure Code, mediators cannot be called as witnesses during criminal proceedings.



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## 4. Access to mediation in Belgium

The general offer to victim-offender mediation is mentioned by a law introduced in 2005.

In practice, the service is implemented by private, non-profit organisations (i.e. mediation services) recognised by the Belgian Ministry of Justice.

[Public prosecutors](#), [investigating magistrates](#) and [judges](#) have the duty to inform the parties about the existence of mediation. If they believe that a case is suitable for mediation, they can propose the parties to be referred to a mediation service.

[Self-referral](#) is also possible in Belgium. Parties involved in the criminal procedure can ask for mediation during all stages of criminal proceedings:

- At police stage, a local mediation;
- Before prosecution, a penal mediation;
- After prosecution, mediation for reparation;
- During the execution of the sentence, mostly in prison, mediation at the stage of execution of punishment.

Once received a request for mediation, the mediation service can inform the prosecutor and ask for the authorisation to consult the judicial files (Art. 553, §3, section 2 of the CCP).



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## 5. Informative leaflet in Czech Republic

The [Probation and Mediation Service of the Czech Republic](#) prepared an [informative leaflet](#) called 'The Crime Victim's Guide. Offender integration, Victim participation, Community protection', also translated in English.

The leaflet includes basic information about the recognition of victims and their rights as well as the role and possibilities for offenders. It also includes basic information about victim-offender mediation:

*'Victim-Offender Mediation - contact the Czech Probation and Mediation Service. If you are interested to meet the offender to discuss material damage compensation as well as rectifying your moral harm in the presence of an impartial professional, the so-called mediation, contact the Probation and Mediation Service center (you can obtain contact details at police, state attorney's office or the court). Mediation provides you with a safe and open environment to voice your needs and attitudes with respect to the harm you suffered. Negotiating an agreement on how the crime's consequences shall be resolved is one of the options. Such agreement will respect your interests and needs. Subject to agreement you can bring along other close persons to the mediation session. Mediation is voluntary!'*

The leaflet is available at: [www.pmscr.cz/images/clanky/PMS\\_letak\\_OBETI\\_en.pdf](http://www.pmscr.cz/images/clanky/PMS_letak_OBETI_en.pdf)



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## 6. Informative website in Denmark

Denmark has a set of questions and answers (also translated in English) in its [website dedicated to victim-offender mediation \(www.offerraadgivning.dk/om/english.html\)](http://www.offerraadgivning.dk/om/english.html). Questions include:

- *What is Victim-Offender Mediation?*
- *Why Participate?*
- *What type of offence can form part of the Victim-Offender Mediation programme?*
- *Where does Victim-Offender Mediation take place?*
- *What criteria must be met?*
- *How are the parties referred to Victim-Offender Mediation?*
- *How does Victim-Offender Mediation work in practice?*
- *What is the role of the Mediator?*
- *What happens afterwards?*

This is a good practice for informing the parties and the general public about the possibility of mediation to take place (although in Denmark this is possible only at the police level and for minor offenses).





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## 7. Cooperation practices in Belgium

Concerning the question on good practices, a Belgian respondent mentioned the existence of ‘Expertise networks’ at the level of the College of Prosecutors-General on several topics, including an **expertise network on mediation**.

This network is composed by magistrates of the court of appeal, representatives of the ‘Board of the royal prosecutors’, officials of the Federal Public Service Justice and the competent administrations of the Communities who work in close contact with the mediation services.

On the local level, ‘liaison magistrates on mediation’ are the referral magistrates for all questions on mediation.

On the level of the judiciary localities, boards on mediation (or steering groups) bring together all the actors in the field on a local level.



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## 8. Inclusion criteria in Greece

Contrarily to other Member States, Greece welcomes [penal mediation in cases of domestic violence](#).

Two respondents emphasised the contents of Articles 11-14 from the Law 3500/2006 'On Domestic violence and other provisions'.

The public prosecutor has the duty to examine the case and refer it, if possible, to penal mediation. In this case, some conditions must be fulfilled:

- The offender must give his/her 'word of honour' that he/she will not commit other offenses in the future;
- The offender must attend a therapeutic programme and receive a certificate of attendance to be attached to his/her case file;
- The offender must restore the damage and/or pay a compensation to the victim;
- If the victim is a minor, special protection measures apply, including the consent of the parents or guardians.