Universidade do Minho
Escola de Direito

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Restorative Justice And Domestic Violence Cases: A Critical Perspective

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Restorative Justice And Domestic Violence Cases: A Critical Perspective

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Work carried out under the guidance of
Professora Margarida Maria Oliveira Santos

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Restorative Justice And Domestic Violence Cases: A Critical Perspective

SUMMARY

Domestic violence is a very old phenomenon, as it does not have a specific definition.
It is a practice that still exists despite all the conventions and laws against it. Restorative justice can be an act that replaces/helps criminal procedure as a means of protecting the victims rights.

The dissertation analyses the ability to apply restorative justice to domestic violence cases as an alternative to criminal procedures and the role of the EU Victims Directive on protecting victims' rights when applying restorative justice practices in domestic violence cases.

Conflict resolution seeks to give the victim a voice by facilitating meetings between the aggressor and victim or with the assistance of additional parties to heal the harm and resolve the conflict. Considering the EU Victims Directive, we will study the application of victim offender mediation and the application of EU Victims Directive in some EU countries in domestic violence cases.

Keywords: domestic violence, EU Victims Directive, restorative justice, victim-offender mediation, victims' rights.

Justiça Reparadora e Processos de Violência Doméstica: Uma Perspectiva Crítica

RESUMO

A violência doméstica é um fenómeno antigo, cuja definição não é específica.
É uma prática ainda existente apesar de todas as convenções e leis contra isso. Uma justiça reparadora pode ser uma solução para substituir/simplificar processos criminais, permitindo sempre a proteção dos direitos das vítimas.

Esta dissertação analisa a capacidade de aplicar a justiça reparadora de violência doméstica em vez de optar por processos criminais bem como o papel da Diretiva da UE sobre a proteção dos direitos das vítimas, quando se recorre à justiça reparadora em processos de violência doméstica.

A resolução do conflito procura dar voz à vítima, proporcionando-lhe reuniões entre o agressor e a vítima, possibilitando uma assistência em ambos as partes, precavendo danos e resolvendo conflitos.
Considerando a Diretiva da UE de apoio à vítima, será estudada a aplicação de uma mediação entre a vítima e o agressor bem como a aplicação da referida Diretiva noutros países europeus com processos de violência doméstica.

Palavras-chave: direitos das vítimas, diretiva da UE de apoio às vítimas, justiça reparadora, mediação vítima-agressor, violência doméstica.

INDEX

DIREITOS DE AUTOR E CONDIÇÕES DE UTILIZAÇÃO DO TRABALHO POR TERCEIROS..... ii

ACKNOWLEDGMENTS..... iii

DECLARATION OF INTEGRITY.....iv

SUMMARY.....v

RESUMO.....vi

LISTINGS AND ABBREVIATIONS viii

INTRODUCTION..... 1

CHAPTER I- DOMESTIC VIOLENCE 3

1. Domestic Violence – Its History And Definition 3
2. World Conference On Women And Istanbul Convention..... 4
3. Framework Decision 2001, Victims Of Crime In EU Legislation 6
4. EU Victims Directive Definition And History 7
5. EU Victims' Directive Application On Domestic Violence Cases..... 10

Chapter II- DOMESTIC VIOLENCE VICTIMS AND RESTORATIVE JUSTICE 13

1. The Underemphasized Harm To Victims. 13
2. Restorative Justice As An Alternative? 16
3. Impact Of EU Victims Directive On The Development Of Restorative Justice..... 19
4. History Of Restorative Justice 19
5. Restorative Justice And Intimate Partner Violence 21
6. Victim Rights In Victim Offender Mediation..... 26
7. Victim Offender Mediation As Reinforcement Of Change..... 30

7.1. Victim Offender Mediation Supporting Separation 30

8. Arguments Against The Use Of Victim Offender Mediation Application On Cases Of Domestic Violence 33
9. Arguments In Favour Of The Use Of Victim Offender Mediation Application On Domestic Violence Cases..... 45
10. Comparison Of Using Victim Offender Mediation In EU countries. 51

CONCLUSION 62

BIBLIOGRAPHY..... 64

LISTINGS AND ABBREVIATIONS

EU: European Union.

NGOs: Non Governmental Organizations.

EC: European Commission.

UNIFEM: United Nations Development Fund for Women.

INSTRAW: International Institute of Training and Research for the Promotion of Women.

MVO: Victim Offender Mediation.

UNIFEM: United Nations Development Fund for Women.

DV: Domestic violence.

EKKA: National Center for Social Solidarity.

CLS: criminal sentencing.

FRA: European Union Agency for Fundamental Rights.

VOCIARE: Victims of Crime Implementation Analysis of Rights in Europe.

VPI: Intimate partner violence.

RJC: Restorative Justice Council.

EJTN: European Judicial Training Network.

UNIFEM: Development Fund for Women.

EJTN: The European Judicial Training Network.

INTRODUCTION

Criminal justice usually deals with crimes by punishing the criminal and applying a criminal sanction. After suffering a criminal offense, the victim is left feeling disempowered; the victim loses control over how the offense will be addressed.

As the criminal process is not that effective in compensating the victim, we can say that the victim still needs a closer look on the part of criminal law, despite recent legislative changes that have emerged.

Restorative justice can be a new model (or a complementary model) that protects victims' rights and compensates the victim.[1]

The main objective of this work is to present restorative justice as an effective mechanism, referring to protecting the victim, recovering the victim's role, and offering her/him mechanisms to resolve conflicts, granting the necessary balance in her her/his life as a complementarity to the criminal system, and filling the gaps left in the victim's protection. We will focus especially on victim offender mediation and on the importance of the EU Victims Directive (Directive 2012/729/EU of the European Parliament and of the Council of 25 October 2012) and its antecedent in this path.

The EC Guidance Document Article 12 —Right To Safeguards In The Context Of Restorative Justice services (Recital 46) defines restorative justice services as following:

"Restorative justice services encompass a range of services, whether attached to, running prior to, in parallel with, or after criminal proceedings (pre-trial and post-trial). They may be available in relation to certain types of crime or only in relation to adult or child offenders and include, for example, victim-offender mediation, family group conferencing, and sentencing circles. "[2]

The EU Victims Directive has not yet led to an extension of special protection status to a wider range of victims with special needs. In Poland, for example, the extension of special protection rights to victims other than victims of child abuse and victims of domestic violence has not had a great impact in practice, because these two groups account for the majority of victims.[3]

This work is divided into 2 chapters, beyond the introduction and the conclusion.

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[1] Bazelon, Lara, and Bruce A. Green. "Victims' Rights from a Restorative Perspective." Ohio St. J. Crim. L. 17 (2019): 293.
Available at: https://ir.lawnet.fordham.edu/faculty_scholarship/1079.

[2] Europeană, Comisia."DG Justice Guidance Document related to the transposition and implementation of 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, December 2013."

[3] "European E-Justice Portal – If My Claim Is To Be Considered in This Country." n.d. Available at https://e-justice.europa.eu/491/EN/if_my_claim_is_to_be_considered_in_this_country?Poland&member=1.

Chapter one of the thesis explains domestic violence, its history, and its definition, including the World Conference on Women, the Istanbul Convention, and the Framework Decision 2001, reaching the EU Victims Directive.

In the second chapter we will study the underemphasized harm to victims when applying criminal procedures in domestic violence cases and restorative justice as an alternative or a complementary that can reduce that harm and reassure the victim, the impact of the EU Victims Directive in the development of restorative justice, the history of restorative justice, and its application on intimate partner violence cases and victim's rights in victim-offender mediation and victim-offender mediation as reinforcement of change, we will be also discussing the arguments in favour and against the application of victim-offender mediation on domestic violence cases as comparison of the application of restorative justice on domestic violence cases in the EU as in the end, we will be reaching the conclusion.

CHAPTER I- DOMESTIC VIOLENCE

1. Domestic Violence – Its History And Definition

Before studying the application of restorative justice on domestic violence cases, we will give a brief definition of domestic violence and its history, addressing it as a human rights violation and mentioning the main treaties related to domestic violence.

The European Commission report on domestic violence against women of year 2010 defines domestic violence against women as "Any act of gender-based violence that results in or is likely to result in physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life."[4]

Some human rights activists prefer a broad-based definition that includes "structural violence"such as poverty, and unequal access to health and education. Others have argued for a more limited definition in order not to lose the actual descriptive power of the term.[5]

Richard Gelles and Murray Straus, the authors of two national studies that assessed the prevalence of domestic violence, limited their definition to physical abuse to: "Specific, definable acts of omission and commission that are harmful to individuals in families."[6]

As sociologist Liz Kelly has noted, the prevailing stereotype about domestic violence is that assaults are physical, frequent, and life-threatening.[7]

The Convention on Preventing and Combating Violence Against Women and Domestic Violence defines domestic violence as:

[4] EC–European Commission. "Domestic Violence against Women. Report." (2010), available at https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/ending-gender-based-violence_en.
[5] Heise, Lori L., Jacqueline Pitanguy, and Adrienne Germain. " Violence against women: the hidden health burden." World Bank discussion papers 255 (1994).
[6] Gelles, Richard J, and Murray Arnold Straus. 1989. Intimate Violence: [the Causes and Consequences of Abuse in the American Family]. New York, Toronto: Simon & Schuster.
[7] McGlynn, Clare, Erika Rackley, and Ruth Houghton. 2017. "Beyond 'Revenge Porn': The Continuum of Image-Based Sexual Abuse." Feminist Legal Studies 25 (1): 25–46. https://doi.org/10.1007/s10691-017-9343-2.

"All acts of physical, sexual, psychological, or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether the perpetrator shares or has shared the same residence with the victim".[8]

The development of the concept of domestic violence emerged in the 20th century, when federal and state laws defined and banned forms of domestic abuse against a number of designated victim groups.[9] In 1850, the United States was the first American state to pass a law against a husband beating his wife, as other American states started doing the same. Police started to interfere more in the early to mid-20th century, police started to interfere more with cases related to domestic violence. With the huge change to the laws that came with the women's movement, in 1970, legislative bodies began to modernise their definitions where the term domestic When violence began to be used in 1973, women were coming together with African Americans to seek their equal rights. From this, the battered women's movement was born.[10]

2. World Conference On Women And Istanbul Convention

The conference promoted the creation of the United Nations Development Fund for Women (UNIFEM). The International Institute of Training and Research for the Promotion of Women (INSTRAW) hosted 133 delegations from the States, 113 of which were led by women. Participants from various genders, cultures, and realities shared their perspectives on the state of women in their respective countries, which helped to institutionalize a global movement.[11]

The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, known as the Istanbul Convention, came into force on August 1, 2014.[12]
The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) is the first instrument in Europe to set legally binding standards specifically to prevent gender-based violence, protect victims of violence, and punish perpetrators.

[8] Stubberud, Elisabeth, Karin Hovde, and Mari Helenedatter Aarbakke. "The Istanbul Convention-The Nordic Way. The Nordic Countries' Implementation of a selection of paragraphs in The Council of Europe Convention on preventing and combating violence against women and domestic violence." (2018).
[9] Dewey, Susan C., and Tonia P. St Germain. "Social services fatigue in domestic violence service provision facilities." Affilia 29, no. 4 (2014): 389-403.
[10] A Brief History & Overview of Domestic Violence | Rudnick, Addonizio, Pappa & Casazza PC." 2019. Rudnick Law. September 4, 2019.https://www.rudnicklaw.com/blog/history-domestic-violence/#:~:text=Legally%2C%20the%20definition%20of%20domestic%20violence%20has%20underge%E2%80%8C.
[11] Olcott, Jocelyn. "Empires of Information: Media Strategies for the 1975 International Women's Year." Journal of Women's History 24, no. 4 (2012): 24-48.
[12] Maxim, Felicia, And Elena-Alexandra Andrei. " Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence-Implementation of the Convention Provision by Romania." In Int'l Conf. Educ. & Creativity for Knowledge-Based Soc'y, p. 15. 2021.

Following the EU's signing of the Convention in June 2017, the European Parliament's consent is required for the EU's accession to the Convention. In response to the Council's formal request for that consent, Parliament adopted an interim resolution in September 2017 and reviewed progress towards EU accession in June 2018.[13]

The Convention is a Council of Europe Convention from 2011 aiming at combating violence against women and domestic violence. It addresses violence against women through measures aimed at preventing violence, protecting victims, and prosecuting the perpetrators. It also recognizes violence against women as a human rights violation as it aims to bring about societal change by challenging acceptance or denial of such violence and gender stereotyping.[14]

As its main objectives, it includes protecting victims from violence, raising awareness to increase understanding of the issue of violence against women and its consequences, improving the skills of professionals working in the field, allowing better support and advice for women experiencing violence, and supporting the role of NGOs, civil society, and the media. And finally, and most importantly, give victims of violence a stronger role and better rights in criminal proceedings.[15]

The Convention specifies the measures that must be taken by state institutions, together with civil associations and NGOs. The main measures for this stage include training specialists who will be in direct contact with potential victims and maintaining good family relations.
When state institutions have failed to prevent violence, the State has an obligation to secure the victims and witnesses of violence from further consequences. Specialised counselling centres and shelters for the victims of domestic violence and battered women play a key role at this stage, as the convention states that "Under international law, states must intervene in the punishment of perpetrators for crime against women and apply adequate preventive and protective measures for female victims of abuse".[16]

After discussing domestic violence history and definition and the Istanbul convention, we will be shedding light on victims' rights since victims of domestic violence are victims that need to be protected

[13]Meyersfeld, Bonita C. "The council of Europe convention on preventing and combating violence against women and domestic violence: council of Europe convention on preventing and combating violence against women and domestic violence." International legal materials 51, no. 1 (2012): 106-132.
[14] Magdinceva-Sopova, Marija. "Women's Rights Are Human Rights: A Decade of the Council of Europe Istanbul Convention." Yearbook - Faculty of Tourism and Business Logistics, 2021.
[15] The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention): Questions and Answers." n.d. https://rm.coe.int/istanbul-convention-questions-and-answers/16808f0b80.
[16] Afet Mamuti Ratification Of The Istanbul Convention As A Warranty For The Protection Of Women From Domestic Violence." n.d.http://pf.ukim.edu.mk/wp-content/uploads/2020/05/30.-Afet-Mamuti.pdf.

as other victims, we will be discussing a framework decision that was implemented by the European Union to protect victims.

3. Framework Decision 2001, Victims Of Crime In EU Legislation

The framework decision 2001, the creation of which was an initiative of the Portuguese Republic, obliges the Member States of the European Union to adapt their national laws to afford victims of crime a minimum level of protection. The document also contains a specific provision on mediation in criminal cases. Article 10 states that:
"Each Member State shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure; Each Member State shall ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account".[17]

The framework Decision is the first supranational hard-law act specifically dealing with the standing of victims in criminal proceedings. It constitutes a historical turning point in the development of victims' rights not only within the EU, but also from a global international perspective. According to its preamble, there was a Compelling need at the beginning of the new millennium for rules and practices concerning the standing of victims and their rights to be approximated, in particular as regards the right to be treated with respect for their dignity, the right to provide and receive information, the right to understand and be understood, the right to be protected at the various stages of procedure, and the right to have allowance made for the disadvantage of living in a different Member State from the one in which the crime was committed. Despite the indelible mark left by this measure, its concrete effects were not as satisfactory as expected, especially because no remedy was available in case the Member States did not implement the Framework Decisions correctly.[18]

Some years later, Directive 2004/80/EC was adopted. This act allowed certain categories of cross-border victims, i.e., victims of crimes committed in a Member State other than that of their residence, to access an EU-funded compensation scheme. The possibility of

[17] For more information check 001/220/JHA: Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings at EUR-Lex - 32001F0220 - EN - EUR-Lex (europa.eu).
[18] Pemberton, Antony, and Marc Groenhuijsen. "Developing victim's rights within the European Union: Past, present and future." Present and Future (October 21, 2011) (2011).

adopting directives rather than framework decisions led to much more satisfactory and effective results, also because the European Commission was granted the power to start infringement procedures against Member States failing to implement directives within the prescribed time limit. EU institutions started considering the development of a legal framework capable of offering victims a wide range of entitlements and protection measures.[19]

As a result, a series of directives was adopted to harmonise Member States' criminal law and introduce certain victim-oriented provisions, i.e., Directives 2011/36 /EU[20], 2011/93/EU[21]and 2017/541/EU[22]. However, these directives only address specific types of offences, namely trafficking in human beings, sexual abuse and sexual exploitation of children, child pornography, and terrorism, and do not provide for applicable victims' rights.[23]

4. EU Victims Directive Definition And History

Improving the protection of victims in criminal procedures, has been a focus of EU policy in recent years, especially since the Commission identified the need for action in this field as a strategic priority in the Action Plan implementing the European Council's Stockholm Programme.[24]

After the adoption of Lisbon Treaty that stipulates minimum requirements relevant within the Member States with the reason to facilitate mutual reputation of judgements and different judicial selections and police and judicial cooperation in crook subjects with cross border character, the endeavours of the EU have received a brand-new dimension. Concrete steps have been additionally made, on the idea of Stockholm Program. The Commission and Member States have requested to look at a way to enhance

[19] Directive, Council. "80/EC of 29 April 2004 relating to compensation to crime victims." OJ L 261, no. 6.8 (2004): 2004.
[20] Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA Available at EUR-Lex - 32011L0036 - EN - EUR-Lex (europa.eu).
[21] Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA Available at EUR-Lex - 32011L0093 - EN - EUR-Lex (europa.eu).
[22] COMMISSION STAFF WORKING DOCUMENT Evaluation of Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA Accompanying the document REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL based on Article 29(2) of Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.Available at EUR-Lex - 52021SC0324 - EN - EUR-Lex (europa.eu).
[23] Peruzzo, Katia. 2018. "Diachrony in Legal Terminology: A Case Study on the Rights of Victims of Crime in the EU." Asp, no. 74 (November): 113–34. https://doi.org/10.4000/asp.5426.
[24] "Action Plan Implementing the Stockholm Programme." n.d. Ec.europa.eu.
Available at https://ec.europa.eu/anti-trafficking/action-plan-implementing-stockholm-programme_en.

regulation and realistic guide measures for safety of victims with reference to big attention, guide, and reputation of the precedence given to all victims of crime.[25]

In October 2012, the EU Victims Directive (Directive 2012/729/EU of the European Parliament and of the Council of 25 October 2012) replaced Framework decision 2001/220/JHA on the standing of victims in criminal proceedings, which was adopted by the European Commission in 2001.[26]

The Victims' Rights Directive imposes clear obligations on Member States to implement victims' rights into their national laws and to apply them in practice. The Member States must also set up the necessary supporting structures that will ensure that the laws are applied in practice. It includes organizing and setting up support services and organizing training for people who meet victims of crime.[27]

Different methods have been used to transpose the directive. The ability of parties to freely consent and be fully informed about the repercussions of the restorative justice process is given priority. Access to unbiased guidance, as well as the ability to withdraw from the process at any time, are also stressed. The guideline also presupposes that any restorative justice process must protect the offender's fundamental procedural rights. In addition, the directive calls for Member States to set up referral systems for victims who want to take part in restorative justice measures. These, too, will need to be tailored to local conditions.[28]

Member States have transposed the directive by either amending existing national laws or by combining existing laws with new legislation or by introducing entirely new measures, often in the form of a single, all-encompassing piece of legislation. Some stakeholder feedback suggests that in countries with a previously less-developed victim support system, transposing the directive through a single legal act can heighten the focus on victims' rights while bringing different measures together. The practical application of the directive on the ground differs quite substantially from the legal transposition. The

[25] Eur-Lex [online] (2007) "Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December
2007", Official Journal of the European Union, Available: http://eurlex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML.
[26] "EUR-Lex - 32012L0029 - EN - EUR-Lex." n.d. Eur-Lex.europa.eu. https://eur-lex.europa.eu/eli/dir/2012/29/oj.
[27] Buczma, S. R. (2013, September). An overview of the law concerning protection of victims of crime in the view of the adoption of the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime in the European Union. In ERA Forum (Vol. 14, No. 2, pp. 235-250). Springer Berlin Heidelberg.
[28] Wagner, Emma, Svend Bech, and Jesús Martínez. Translating for the European Union institutions. Routledge, 2014.

directive has had a greater impact in EU Member States where frameworks for victim support and protection were previously not well developed.[29]

Training, the provision of interpretation and translation services, and conducting individual assessments have been identified as the biggest cost drivers of the directive. Lack of sufficient training for practitioners also presents a practical challenge in some countries.[30]

In some countries, there remains a heavy reliance on the provision of key services to victims by NGOs; there is a risk in such cases that the level of support and protection for victims varies across the country.[31]

Victims of sexual and/or domestic violence already received special attention in many Member States before adoption of the directive, meaning it has had less of an impact in this area compared to other types of crime.[32]

Regarding the directive's relevance to victims' evolving needs, evidence suggests it remains highly relevant, but its practical implementation still falls short of victims' needs in some respects, in terms of access to justice, and the availability of relevant support systems for all types of victims. The Victims' Rights Directive is a minimum standard directive. Member States may go beyond the rights set up in the Directive and deepen them and/or give victims even more rights.[33]

We will be also asking a question if the EU Victims Directive is enough to protect the victims of domestic violence, as speaking about the underemphasized harm to victims in cases of applying procedures in domestic violence.

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[29] Buczma, Sławomir R. "An overview of the law concerning protection of victims of crime in the view of the adoption of the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime in the European Union." In ERA Forum, vol. 14, no. 2, pp. 235-250. Springer Berlin Heidelberg, 2013.

[30] REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL
on the implementation of 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 Available at https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0188&from=EN.

[31] World Health Organization. "Violence against women prevalence estimates, 2018: global, regional and national prevalence estimates for intimate partner violence against women and global and regional prevalence estimates for non-partner sexual violence against women." (2021).

[32] Androulakis, Ioannis N. "European perspectives on rights for victims of crime." Eucrim: the European Criminal Law Associations' forum 4 (2014): 111-116.

[33] "Press Corner." n.d. European Commission - European Commission. Available at https://ec.europa.eu/commission/presscorner/detail/hr/MEMO_15_6113.

5. EU Victims' Directive Application On Domestic Violence Cases

A study [34]shows that women applying for protection orders may have specific needs. Because Please put here also the reference. Every victim's needs are different, some victims might not be eager to request a protection order on their own behalf. On the other hand, some victims might simply want the violence to end without demanding that the offender being responsible for his crime.[35]

EU reports[36] by the European Commission and the Fundamental Rights Agency have found that women in all Member States continue to suffer violence at the hands of abusive partners. The Victims' Rights Directive applies to all crime victims and makes explicit reference to victims of gender-based-violence.[37]

In 2014, FRA found by surveying 42,000 women in the EU that out of all women who have a partner (or previous partner), 22% have experienced physical and/or sexual violence.[38]The survey found that one in six women are victimized by a previous partner after they have broken up. Of those women who experienced violence by a previous partner and were pregnant during this relationship,42% experienced violence by this previous partner while pregnant. In comparison, 20 % experienced violence by their current partner while pregnant. In Member States with strong NGO networks for victim support, such as Finland or Sweden, there are effective, cooperative mechanisms for the recognition and support of victims of domestic violence.[39]

Overall, there appears to be an increase that has been encountered with the implementation of the directive, leading to more availability of support, including more trauma support, counselling or psychiatric services, and more employees trained and aware of the needs of domestic violence victims. NGOs working specifically in the field of women's rights or operating as support services to victims of domestic violence tend to agree that the number of practitioners and the level of training, they receive is still insufficient for the scale of the problem.[40]

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[34] Malecha, Ann, Judith McFarlane, Julia Gist, Kathy Watson, Elizabeth Batten, Iva Hall, and Sheila Smith. "Applying for and dropping a protection order: A study with 150 women." Criminal Justice Policy Review 14, no. 4 (2003): 486-504.

[35] Choudhry, Shazia. "Towards a transformative conceptualisation of violence against women-A critical frame analysis of council of Europe discourse on violence against women." The Modern Law Review 79, no. 3 (2016): 406-441.

[36] Violence against women: an EU-wide survey. Main results report Available at https://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report.

[37] Peers, Steve, Tamara Hervey, Jeff Kenner, and Angela Ward, eds. The EU Charter of fundamental rights: a commentary. Bloomsbury Publishing, 2021.

[38] Rights, H. T. M. F. "Violence against women: an EU-wide survey." Luxembourg: Publications Office of the European Union (2014).

[39] Nevala, Sami. "Violence against women: An EU-wide survey." European Union agency for fundamental rights (2014).

[40] Nicola Graham-Kevan, "Domestic Violence: Research and Implications for Batterer Programmes in Europe," European Journal on Criminal Policy and Research 13, no. 3-4 (December 2007): 213-226.

One of the most common problems affecting victims of domestic violence is that they are often also offenders of "low" crimes such as property damage or assault against the offender. In these cases, as pointed out by an NGO, the victim might be treated as a suspect, leading to secondary victimization and limited rights such as the right to be heard[41] in Article 10 where it states:

"This Directive does not address the conditions of the residence of victims of crime in the territory of the Member States." Member States should take the necessary measures to ensure that the rights set out in this Directive are not made conditional on the victim's residence status in their territory or on the victim's citizenship or nationality. "Reporting a crime and participating in criminal proceedings do not create any rights regarding the residence status of the victim".[42]

As well as the right to support in Article 9 of EU Victims Directive.[43]

In addition, there is still an underreporting of incidences or perpetrators of domestic violence in the EU. Practices for receiving and subsequently linking victims to their needed support vary throughout the EU, and in cases where domestic violence victims may not always be recognized, the more effective referral systems are not victim dependent.[44]

This Directive does not address the conditions of the residence of victims of crime in the territory of the Member States. Member States should take the necessary measures to ensure that the rights set out in this Directive are not made conditional on the victim's residence status in their territory or on the victim's citizenship or nationality. Reporting a crime and participating in criminal proceedings do not create any rights regarding the residence status of the victim.[45]

[41] Buczma, Sławomir R. "An overview of the law concerning protection of victims of crime in the view of the adoption of the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime in the European Union." In ERA Forum, vol. 14, no. 2, pp. 235-250. Springer Berlin Heidelberg, 2013.

[42] Kulesza, Cezary. "DIRECTIVE 2012/29/EU OF 25 OCTOBER 2012 ESTABLISHING MINIMUM STANDARDS ON THE RIGHTS, SUPPORT AND PROTECTION OF VICTIMS OF CRIME" (2014).

[43] For more information check EU victim's directive at EUR-Lex - 32012L0029 - EN - EUR-Lex (europa.eu)

[44] Buczma, Sławomir R. "An overview of the law concerning protection of victims of crime in the view of the adoption of the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime in the European Union." In ERA Forum, vol. 14, no. 2, pp. 235-250. Springer Berlin Heidelberg, 2013.

[45] Pemberton Antony, and Carmen Rasquete. "Victims in Europe—Assessment of the implementation of the Framework Decision on the standing of victims in criminal proceedings: Preliminary results." In Perspektiven professioneller Opferhilfe, pp. 99 - IU. VS Verlag fiir Sozialwissenschafien, 2010.

In Finland, for example, the authorities (with the victim's consent) privately contact and arrange for the relevant support authorities to reach out to the victim, often through special measures to protect the privacy of the victim from their partner.[46]

In terms of changing social stigmas and societal attitudes, there is almost universal agreement that the role the directive has had in changing the victim's place in the criminal procedure and making victims of domestic violence a rights-based epicenter in the justice proceedings will improve the standing of victims and increase awareness of the complexities of domestic violence. The added value of the directive is limited in some Member States where good practices and effective support networks for victims of domestic violence were pre-existing, such as in Finland and Sweden.[47]

Another problem is that the added value of the directive may not be realized in some Member States where generic victim support frameworks do not meet the often complex or specific needs of victims of domestic violence. In Hungary for example, research indicated a challenging relationship between NGOs operating with victims of domestic violence and the government. This has resulted in less funding, less training for practitioners, and overall, it is expected to have a negative effect on both the victims of domestic violence and the attitudes and perceptions of domestic violence as a problem.[48]

As an overall overview, we can conclude that the directive had limited effect in some countries, as it did not add value to some countries that already had a strong system for helping victims of domestic violence. In some countries, the generic victim support does not meet the complexity of the needs of domestic violence victims, in addition to the underreporting problem that is still existing in many European countries that the directive could not yet solve, and the lack of training of practitioners that are dealing with domestic violence victims, but overall, the directive improved the place of the victim in the criminal procedure.[49]

[46] Lobnikar, Branko. "Joachim Kersten, Catharina Vogt1 &." Improving Frontline Responses to Domestic Violence (2021): 3.
[47] European Parliamentary Research Service. "The Victims' Rights Directive 2012/29/EU–European Implementation Assessment." (2017).
[48] Novakova, Nataliya. Civil society in Central Europe: threats and ways forward. German Marshall Fund of the United States., 2020.
[49] European Parliamentary Research Service. "The Victims' Rights Directive 2012/29/EU–European Implementation Assessment." (2017).

Chapter II- DOMESTIC VIOLENCE VICTIMS AND RESTORATIVE JUSTICE

As we will be discussing the underemphasized harm to victims in domestic violence cases.

1. The Underemphasized Harm To Victims.

The use of the law on the part of victims of conjugal violence is found in the study[50] that finds that women use the threat of prosecution as a deterrent. It is unclear how many women who file charges follow through with charges when bargaining fails, but Ford's research shows that some women intentionally use the threat as a power resource to pressure their partners into agreement, which they consider satisfactory. Ford's findings clearly support the premise that parties seek to resolve issues bilaterally and that they turn to third-party intervention only if they are unable to resolve the problem themselves.[51]

According to Hoyle and Sanders, thirty-one of the fifty-three victims in their sample who called the police themselves said they wanted the offender to be arrested.[52]

Similar findings are reported by Buzawa and Austin, who found that only one-third of the 110 victims in their sample who called the police claimed that they desired prosecution, while two-thirds said they did not want prosecution and preferred talking or doing nothing. If we believe that responding to victims' needs is a vital component of an effective response to domestic violence, we must understand why victims who come to a system for assistance attempt to drop out of that system.[53]

Ford argues that actual prosecution of the criminal act is probably less important to many victims than the power they gain through bargaining with a significant threat of prosecution and punishment.

[50] Ford, David A. "Prosecution as a victim power resource: A note on empowering women in violent conjugal relationships." Law and Society Review (1991): 313-334.

[51] Wemmers, Jo-Anne, and Katie Cyr. 2005. “Can Mediation Be Therapeutic for Crime Victims? An Evaluation of Victims’ Experiences in Mediation with Young Offenders.” Canadian Journal of Criminology and Criminal Justice 47 (3): 527–44. https://doi.org/10.3138/cjccj.47.3.527.

[52] Sanders, A., and C. Hoyle. "Police Response to Domestic Violence: From Victim Choice to Victim Empowerment' (2000)." British Journal of Criminology 40:14.

[53] Dutton, Mary A., Lisa A. Goodman, and Lauren Bennett. 1999. “Court-Involved Battered Women’s Responses to Violence: The Role of Psychological, Physical, and Sexual Abuse.” Violence and Victims 14 (1): 89–104. https://doi.org/10.1891/0886-6708.14.1.89.

Consequently, having obtained their goal, victims see no reason to continue to seek third-party intervention and want to drop the case.[54]

Zehr and Roach argue that victims want to play a role in the decision-making procedure and advocate restorative justice to meet victim needs.[55]

Though underemphasized by proponents of a victims' rights amendment and similar reforms, these harms have garnered significant attention from those who seek to reform the criminal process in more fundamental ways, including by expanding the pursuit of restorative justice.[56]

The criminal process denies the crime victim agency or autonomy: after suffering a criminal offense that left her /his feeling disempowered, the victim loses control over how the offence will be addressed.[57]

Theoretically, and as a matter of discretion, and evidence permitting, prosecutors could defer to crime victims regarding whether to bring charges, offer an appeal bargain, or call the victim as a witness. But while some victims' rights laws require prosecutors to confer with victims about these decisions, none require prosecutors to defer to victims. If there is sufficient evidence to justify a prosecution, the decision whether to bring charges and whether to compel the victim to testify is up to the prosecutor.[58]

The testimony is given meaning by the attorneys through their opening and closing arguments, which characterize, credit, or discredit the testimony and help the jury understand it. Once the prosecutor decides to call a victim as a witness, the victim's story is shaped and appropriated by others. The necessary information is obtained by prosecutors through direct examination and defense attorneys through cross-examination. Constitutional, statutory, and evidentiary provisions provide a framework governing how victims' stories can be told which means victims have no control over how they or the lawyers at trial tell their story.[59]

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[54] Ford, David A. "Prosecution as a Victim Power Resource: A Note on Empowering Women in Violent Conjugal Relationships." Law & Society Review 25, no. 2 (1991): 313–34. https://doi.org/10.2307/3053801.

[55] Zehr (1990) and Roach (1999) argue that victims want to play a role in the decision-making procedure and advocate restorative justice as a means to meet victim needs.

[56] Britto, Sarah, and Mary Ellen Reimund. 2013. "Making Space for Restorative Justice in Criminal Justice and Criminology Curricula and Courses." Contemporary Justice Review 16 (1): 150–70. https://doi.org/10.1080/10282580.2013.769301.

[57] O'Neill, Michael Edmund. 2004. "Irrationality and the Criminal Sanction." Supreme Court Economic Review 12 (January): 139–80. https://doi.org/10.1086/scer.12.3655320.

[58] Bazelon, Lara Abigail. 2011. "Hard Lessons: The Role of Law School Clinics in Addressing Prosecutorial Misconduct." SSRN Electronic Journal. https://doi.org/10.2139/ssrn.1803540.

[59] Christie, Nils. 1977. "Conflicts as Property." The British Journal of Criminology 17 (1): 1–15. https://doi.org/10.1093/oxfordjournals.bjc.a046783.

Criminal defendants have a right against self-harm in the form of self-incriminatory testimony; they can refuse to testify in the adjudicative process. The compulsion that they testify, subject to civil and criminal contempt, means that they can be forced to hurt themselves psychologically by submitting to public interrogation.[60]

As victims, they have no right to protection from self-harm. No matter how much they may be hurt psychologically by having to testify, the decision is not theirs.[61]

Even victims' medical and mental health records may be subject to discovery and introduced into evidence at trial, notwithstanding the ordinary expectation that communications with health-care professionals are confidential.[62]

State laws do not necessarily recognize an absolute import for communications with a therapist or other medical professional in domestic violence cases, and health-care records may therefore be subject to discovery, particularly if they are likely to assist in the defense.[63]

Rape shield laws are not an absolute barrier to the inspection and exposure of deeply private information.[64]

Individuals involved in the criminal justice process, if only as witnesses, benefit from legal advice; as a result, corporations commonly pay lawyers to represent officers and employees who are witnesses in both civil and criminal cases involving the corporation. Most cannot afford to retain counsel, and are not afforded a lawyer to advise them, to advocate on their behalf with the prosecutor, and to help them take advantage of whatever legal Protections may be available. Individuals with legal rights need lawyers to help implement those rights.[65]

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[60] Lévêque, Pierre. 1976. "Antigone Le Borgne." Revue Des Études Grecques 89 (426): 604–10. https://doi.org/10.3406/reg.1976.4118.

[61] As victims have no right to protection from self-harm. No matter how much they may be hurt psychologically by having to testify, the decision is not theirs.

[62] Kulshreshtha, Nikunj. 2019. "Ought the Rape/Sexual Assault Law in India Be Gender Neutral?" SSRN Electronic Journal. https://doi.org/10.2139/ssrn.3704050.

[63] "Admitting Mental Health Evidence to Impeach the Credibility of a Sexual Assault Complainant." 2005. University of Pennsylvania Law Review 153 (4): 1373. https://doi.org/10.2307/4150616.

[64] Kress, Victoria E. White, Robyn L. Trippany, and James Michael Nolan. 2003. "Responding to Sexual Assault Victims: Considerations for College Counselors." Journal of College Counseling 6 (2): 124–33. https://doi.org/10.1002/j.2161-1882.2003.tb00233.x.

[65] Kress, Victoria E. White, Robyn L. Trippany, and James Michael Nolan. 2003. "Responding to Sexual Assault Victims: Considerations for College Counselors." Journal of College Counseling 6 (2): 124–33. https://doi.org/10.1002/j.2161-1882.2003.tb00233.x.

2. Restorative Justice As An Alternative?

Since the 1990s, restorative justice has emerged as a popular alternative to more traditional responses to criminal behaviour. At present, restorative programs and policies have been implemented, trialed, or planned in all regions of the world, including Australasia, America, Europe, Africa, and Asia. The global rise of restorative justice has followed from a growing number of claims regarding its ability to achieve high levels of victim involvement, participant satisfaction, procedural justice, offender accountability and compliance and lower rates of reoffending. For some victims, voluntarily engaging in a restorative justice process, which can take a variety of forms, including mediated victim-offender dialogues, healing circles, and other, more indirect ways of engagement, offers an opportunity for victims to tell their stories in their own voices under their own agency.[66]

At the heart of the restorative approach is the offender's acknowledgement of causing harm and validation of the victim's suffering, a reckoning with the offending behavior that involves reflection and insight, a commitment not to re-offend, and an agreed-upon means of holding the person accountable.[67]

The criminogenic effect of prison has been well documented: We know that people who go to prison, particularly maximum-security prisons for serious violent crimes, can emerge hardened and more violent than when they entered. What many want is an opportunity to tell their story under their own power, validation of their suffering, accountability from the offender, a promise of change moving forward, and an agreed upon means of repairing the harm done to the victim and to the community.[68]

Some victims want access to counselling and additional measures such as securing safe housing or civil protective orders. The majority of prisons also do not provide the programming and educational opportunities that offenders need to grapple with their sexually violent behavior, including hearing directly from the victim or surrogate victim and taking the necessary actions to change that behaviour.[69]

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[66] Fleury, Ruth E. 2002. "Missing Voices." Violence against Women 8 (2): 181–205. https://doi.org/10.1177/10778010222183008.
[67] Koss, Mary P. 2013. "The RESTORE Program of Restorative Justice for Sex Crimes." Journal of Interpersonal Violence 29 (9): 1623–60. https://doi.org/10.1177/0886260513511537.
[68] Moffette, David, and Carolyn Côté-Lussier. "2020 - Contemporary Criminological Issues: Moving Beyond Insecurity and Exclusion (Edited by Côté-Lussier, Moffette, Piché; University of Ottawa Press)." University of Ottawa Press, 2020.
[69] Cherry, Christopher. 1989. "How Can We Seize the Past?" Philosophy 64 (247): 67–78. https://doi.org/10.1017/s0031819100044041.

Established programs have demonstrated that restorative justice, rigorously applied, is one such alternative, even in cases involving extreme violence.[70]

Scholars and psychologists have argued that it makes little sense to exclude sexual assault cases from programs like these, which are survivor-centered and address criminal acts that are deeply and personally violative.[71]

Restorative programs depend on the voluntary participation of victims, and not all victims will want to engage with them.[72]

So far as prosecutors seek to do what is best for crime victims, victims of sexual assault who would prefer a non-adjudicative and non-punitive alternative such as a restorative justice process should have that option because it empowers them, helps them heal, and aligns with prosecutorial objectives. But barring exceptional cases, for example, cases involving repeat, violent sexual offenders, there is nothing to suggest that a prosecutor who is giving priority to the victim's interests should not be honoured over a victim's restorative justice preference.[73]

As we will speak about the EU Victims Directive support to restorative justice practices in establishing of the right to safeguards and support to restorative justice practices.[74]

Where it states in Recital 46 the following:
"Restorative justice services, including for example victim-offender mediation, family group conferencing, and sentencing circles, can be of great benefit to the victim, but require safeguards to prevent secondary and repeat victimization, intimidation, and retaliation.".[75]

[70] Carreño, Nelson Enrique Muñoz. "Victim-offender relationship and types of sexual assaults on children and adolescents." Revista Argentina de Clínica Psicológica 28, no. 5 (2019): 823.
[71] "Carreño, Nelson Enrique Muñoz. "Victim-offender relationship and types of sexual assaults on children and adolescents." Revista Argentina de Clínica Psicológica 28, no. 5 (2019): 823.
[72] Sered, Danielle. 2021. Until We Reckon: Violence, Mass Incarceration, and a Road to Repair. New York: The New Press.
[73] Regehr, Cheryl, and Ramona Alaggia. 2006. "Perspectives of Justice for Victims of Sexual Violence." Victims & Offenders 1 (1): 33–46. https://doi.org/10.1080/15564880500498721.
[74] Busch, Ruth. "12 Domestic Violence and Restorative Justice Initiatives: Who Pays if We Get it Wrong?" Restorative justice and family violence (2002): 223.
[75] For more information check EU victim's directive at EUR-Lex - 32012L0029 - EN - EUR-Lex (europa.eu).

As Article 12 of the directive establishes the right of victims to safeguards.[76]

The Directive acknowledges the variety of restorative justice services, as well as their existence. Only few countries use the term "restorative justice" in their legislation, while most use other terms such as "offense resolution' or "victim offender mediation." As it states that information about restorative justice services should be given to victims from the first contact with a competent authority in line with the individualized approach in the Victim's Directive.[77]

As it states that information about restorative justice services should be given to victims from the first contact with a competent authority in line with the individualized approach in the Victim's Directive.

The extent or detail of information given may vary depending on the specific needs and personal circumstances of the victim. A victim's right to be informed about restorative justice services is a fundamental human right. The right to information about available restorative justice services in the Victims' Directive does not create an obligation for Member States to actively promote access to such services.[78]

Article 12(1)(d) states that voluntary agreements may be considered in any further criminal proceedings. This supports the link between the restorative process and the criminal procedure. The use of mediation will be an important factor that plays a role in the conditional discontinuation of proceedings or out-of-court settlement.[79]

The Restorative Justice Council (RJC) worked with the European Forum for Restorative Justice to secure changes to the draft Directive, based on the evidence that restorative justice, when delivered well, provides many benefits for victims. The final text of the Directive reflects the benefits of participation in

[76] For more information check 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 at EUR-Lex - 32012L0029 - EN - EUR-Lex (europa.eu).

[77] Kirchengast, Tyrone. "Victims' rights and the right to review: A corollary of the victim's pre-trial rights to justice." International Journal for Crime, Justice and Social Democracy 5, no. 4 (2016): 103.

[78] Katrien Lauwaert, "Restorative Justice in the 2012 EU Victims Directive: A Right to Quality Service, but No Right to Equal Access for Victims of Crime," Restorative Justice 1, no. 3 (2013): 414-425.

[79] Review of Briefing Paper about the Regulation of Restorative Justice in the Directive 2012/29/EU Brunilda Pali European Forum for Restorative Justice 2016. n.d.

restorative justice and sets out the need for minimum standards to "Ensure victims have access to safe and competent restorative justice services."[80]

The EU Victims Directive did not only support and state the use of restorative justice but also influenced the development of restorative justice practices.[81]

3. Impact Of EU Victims Directive On The Development Of Restorative Justice

The Victims' Rights Directive had an important impact in growing criminal provisions on restorative justice in the ones international locations that did now no longer have criminal provisions before, or in growing the criminal framework through transposing into the countrywide regulation the restorative justice provisions of the Victims' Rights Directive. This led to the realization that restorative justice can deal with victims' needs and to the inclusion of restorative justice into the regulations concerning victims' rights.

The level of development of restorative justice prior to the Victims' Rights Directive in a country's legislation and practice affects how services are implemented or function, as well as standards, credibility, and/or public awareness.[82]

After reviewing the background of domestic violence and the European Directive on Victims' Rights, we will talk about the use of restorative justice practices in domestic violence cases rather than the traditional criminal and penal processes.

We will be first defining restorative justice practices and their history.

4. History Of Restorative Justice

The possibility of replacing corporal punishment with monetary compensation for the victim, justifying the sanctions focused on reparation, usually pecuniary, were part of the Code of Hammurabi, dated

[80] Osterman, Linnéa, and Isla Masson. "Making restorative justice work for women who have offended: A Restorative Justice Council research report." (2016).
[81] Jan van Dijk, "Victim-Centered Restorative Justice," Restorative Justice 1, no. 3 (2013): 426-429.
[82] Bazelon, Lara, and Bruce A. Green. "Victims' Rights from a Restorative Perspective." Ohio St. J. Crim. L. 17 (2019): 293.

1772 B.C. In Tablet VIII, which composed the'' Laws of Twelve Tablets'', for the crime of private (interpersonal) crimes, the payment of a pecuniary sum was allowed.[83]

Several authors have written about the origins of restorative justice ideas and practice, and in much of that literature, some aspects of restorative principles and ideas can be dated back as far as the ancient Greeks.[84]

Some argue also that it originates from and follows a number of traditional forms of justice, such as those used by the Maoris in New Zealand, the Navajos or First Nation people in North America, etc. for centuries.[85][86]

The modern use of the term ''restorative justice'' is dated back to Albert Eglash in the late 1950s[87], who used this exact term consistently for the first time. Other authors in the 1970s have also contributed to its revival, such as Nils Christie and Randy Barnett who both contributed defining pieces of writing on which much of the developments in restorative justice have been based.[88]

The first case of restorative justice started in Ontario in 1974, when two young offenders vandalized twenty-two properties. At that time, Mark Yantizi, the probation officer, and a prison support staff member asked the judge if the victims could meet the offenders to see if the situation could be remedied. Later, as word of the process's success spread, they asked again. This ''Kitchener experiment'' required the two teenagers to meet with and pay restitution to every one of the twenty-two people whose property they had vandalized. In 1994, restorative justice took a giant step toward becoming mainstream when the American Bar Association endorsed victim-offender mediation, a program usually associated with first-time offenders and minor crimes. The most widely used approaches in restorative justice are victim-offender mediation, which puts victims and offenders in direct dialogue, nearly always face-to-face, about a specific offense.[89]

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[83] Santos, Cláudia Cruz. Restorative justice: a model of reaction to crime different from criminal justice; why, for what and how? Ied. Coimbra: CoimbraEditora,2014, p.106.

[84] Zehr, Howard. 2007. Changing Lenses: A New Focus for Crime and Justice. Scottdale, Pa.: Herald Press.

[85] Daly, Kathleen. "Restorative Justice: The Real Story." Punishment & Society 4, no. 1 (January 2002): 55–79.

[86] Zinsstag, Estelle, and Inge Vanfraechem. 2012. Conferencing and Restorative Justice: International Practices and Perspectives. Oxford: Oxford University Press, Cop.

[87] Eglash, Albert. ''Creative restitution: some suggestions for prison rehabilitation programs.'' American Journal of Correction 20, no. 6 (1958): 20-34.

[88] Barnett, Randy E. 1977. "Restitution: A New Paradigm of Criminal Justice." Ethics 87 (4): 279–301. https://doi.org/10.1086/292043.

[89] Armour, M. 2012. "Restorative Justice: Some Facts and History." Tikkun 27 (1): 25–65. https://doi.org/10.1215/08879982-2012-1012.

One definition has been that by Marshall:"Restorative justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future".[90]

Article 2 paragraph 1.d in the EU Victims Directive defines restorative justice as:
"Any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offense through the help of an impartial third party".

The Handbook of the United Nations on Restorative Justice defines it as:
"Is any process in which the victim and the offender and, where appropriate, any other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, generally with the help of a facilitator".[91]

Restorative justice values are based on the notions that:
"All parties involved in crime should be included in the response to crime; offenders become accountable through understanding the harm caused by their offense(s),accepting responsibility for that harm, and taking actions to repair the harm they have caused; and crime is defined as harm to individuals and communities".[92]

We will first discuss restorative justice practices for applying restorative justice and then victim offender mediation as it is the most used method in domestic violence cases.

5. Restorative Justice And Intimate Partner Violence

The literature on the use of restorative justice for cases of sexual violence suggests that distinguishing between different types of sexual crimes may be an important factor in determining whether a given case ought to be handled restoratively and if so, how.[93]

[90] Marshall, Tony F. 1996. "The Evolution of Restorative Justice in Britain." European Journal on Criminal Policy and Research 4 (4): 21–43. https://doi.org/10.1007/bf02736712.
[91] Yvon Dandurand, Curt T Griffiths, and United Nations Office On Drugs And Crime. 2006. Handbook on Restorative Justice Programmes. New York; Vienna: United Nations.
[92] Kelly, Loretta. "11 Using Restorative Justice Principles to Address Family Violence in Aboriginal." Restorative justice and family violence (2002): 206.
[93] MacDougall, Lisa Dawn. "Restorative Justice and Sexual Assault in Nova Scotia: Why is the Door Ajar?." PhD diss., Acadia University, 2009.

Curtis-Fawley & Daly argue that in cases of domestic violence, where the victim-survivor and the offender are acquainted, facilitators must be highly skilled in the dynamics of domestic abuse to prevent re-victimisation.[94]

McAlinden maintains that distortions of power in all sexual violence cases are addressed when restorative justice programs stick closely to restorative values and principles.[95]

According to Hargovan, restorative justice for sexual violence should be on a case-by-case basis, with the focus being placed on the suitability of the participants rather than the type of crime per se. Umbreit & Greenwood (2000) argue further that each restorative justice program should have its own criteria for case selection, such as type of offense, age of offender, and whether this is a first-time or a multiple offences offender.[96]

Research indicates that only one-fourth of intimate partner assaults are reported to the police. Seeking to expand opportunities for survivors and increase accountability for offenders, some activists and scholars have been investigating restorative justice. "Restorative justice" is the name for a range of informal methods for addressing crime based on dialogue involving victims, offenders, and their communities.[97]

Like many feminist activists, restorative justice practitioners criticize the existing legal system for failing to meet the needs of victims, and for failing to hold offenders accountable. Like feminist anti-violence activists, restorative justice practitioners are working to address the impact of crime on communities, something the legal system is not designed to do.

On the other hand, there are anti-violence activists and scholars who believe restorative justice offers better ways to meet victims' needs and achieve safety and accountability than the existing legal system.

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[94] Curtis-Fawley, Sarah, and Kathleen Daly. "Gendered violence and restorative justice: The views of victim advocates." Violence against women 11, no. 5 (2005): 603-638.

[95] McAlinden, Anne-Marie. "'Setting'em up': Personal, familial and institutional grooming in the sexual abuse of children." Social & Legal Studies 15, no. 3 (2006): 339-362.

[96] Hargovan, Hema. "Restorative justice and domestic violence: some exploratory thoughts." Agenda 19, no. 66 (2005): 48-56.

[97] Ptacek, James, and Loretta Frederick. "Restorative justice and intimate partner violence." Harrisburg, PA: VAWnet, a projection of the National Resource Center on Domestic Violence/Pennsylvania Coalition Against Domestic Violence (2009).

Pennell has developed a new project in North Carolina, with input from the North Carolina Coalition Against Domestic Violence as well as women's shelters, batterers' counsellors, child welfare workers, the courts, and the police. Pennell designed a model in Canada for addressing child abuse and intimate partner violence that combines restorative practices with a feminist coordinated community response. By designing new interventions with the involvement of battered women's advocates and child protection workers, the needs of survivors are placed at the center of these practices, and safety is prioritized. There are also feminist-restorative approaches that have been developed for sexual assault[98] and for adult survivors of child sexual abuse. Evaluation research on this model showed that it significantly reduced both intimate partner violence and child abuse.[99]

Victim surveys suggest that symbolic reparation is an important component in the healing process. According to Hargovan.[100] Restorative justice for sexual violence should be on a case-by-case basis. In cases where the victim-survivor and offender are acquainted, such as in families, the nature of the sexual violence can involve quite different forms of power and control, requiring attention to the subtle and covert dynamics of power that are often involved.[101]

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McAlinden maintains that distortions of power in all sexual violence cases are addressed when restorative justice programs stick closely to restorative values and principles. In cases where the victim-survivor and offender are acquainted, such as in families, the nature of the sexual violence can involve very different forms of power and control, requiring attention to the subtle and covert dynamics of power that are often involved.[103]

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[98] Koss, Mary P. and Mary Achilles. "Restorative Justice Responses to Sexual Assault." (2008).
[99] "Dichter, Melissa E. 2013. "'They Arrested Me—and I Was the Victim': Women's Experiences with Getting Arrested in the Context of Domestic Violence." Women & Criminal Justice 23 (2): 81–98. https://doi.org/10.1080/08974454.2013.759068.
[100] Hargovan, Hema. "Doing justice differently: Is restorative justice appropriate for domestic violence?" Acta Criminologica: African Journal of Criminology & Victimology 2010, no. sed-2 (2010): 25-41.
[101] Hargovan, Hema. 2015. "Violence, Victimisation and Parole: Reconciling Restorative Justice and Victim Participation." South African Crime Quarterly 54 (0): 55. https://doi.org/10.4314/sacq.v54i1.5.
[102] Cmurtis-Fawley, Sarah, and Kathleen Daly. "Gendered Violence and Restorative Justice: The Views of Victim Advocates." Violence Against Women 11, no. 5 (May 2005): 603–38. https://doi.org/10.1177/1077801205274488.
[103] McAlinden, A-M. (2005). Are There Limits to Restorative Justice? The Case of Child Sexual Abuse. In D. Sullivan, & L. Tifft (Eds.), Handbook of Restorative Justice: A Global Perspective (pp. 299-310). Taylor and Francis.

Curtis-Fawley & Daly argue that in cases of domestic violence, where the victim-survivor and the offender are acquainted, facilitators must be highly skilled in the dynamics of domestic abuse to prevent re-victimisation.[104]

The power imbalance that sexual violence creates is a major concern for victim advocates who view restorative justice processes as an opportunity for offenders to re-victimise the victim unless the proceeding is prepared and managed well.[105]

The logic of restorative justice places the relationship between the victim and offender as central to the "justice" project, rather than the offender and the state, as is the case in the criminal justice system, and it could therefore be argued that restorative justice could reproduce and reinforce the imbalance of power that had occurred in the dynamics of the crime.[106]

Facilitators need to understand the impact of trauma and the dynamics of sexual offending as well as the principles of restorative justice to facilitate the meeting well, including safety and procedural requirements such as the prohibition of hostile, blaming, or profane language.[107]

In relation to the physical safety of participants, if there are any uncertainties as regards a participant's safety, the restorative justice process can take place through indirect communication.[108]

There is a growing body of empirical evidence demonstrating the therapeutic impact of the restorative justice approach on victims. Apart from being able to talk about the offence and its effects Post-traumatic stress decreased, wellbeing is improved, fear is diminished, and social and relational functioning are all improved as a result of restorative justice.[109]

Victims are adamant that they have experienced restorative justice as a healing intervention, eclipsing other attempts at remedy, enabling them to achieve therapeutic goals that have eluded them in other

[104] Curtis-Fawley, Sarah, and Kathleen Daly. "Gendered Violence and Restorative Justice: The Views of Victim Advocates." Violence Against Women 11, no. 5 (May 2005): 603–38. https://doi.org/10.1177/1077801205274488.
[105] Busch, Ruth. "12 Domestic Violence and Restorative Justice Initiatives: Who Pays if We Get it Wrong?". Restorative justice and family violence (2002): 223.
[106] Hudson, Barbara. "Restorative Justice: The Challenge of Sexual and Racial Violence." Journal of Law and Society 25, no. 2 (1998): 237–56.
[107] McDowell, Lana A. "Book Review: J. Ptacek Restorative Justice and Violence Against Women New York, NY: Oxford University Press, 2010. vii, 292 pp. $39.95. ISBN 978-0-19-533548-4." Criminal Justice Review 36 (2011): 216 - 218.
[108] Roberts, Tim, Canada., and Focus Consultants. 1995. Evaluation of the Victim Offender Mediation Project, Langley, B.C.: Final Report. Victoria, B.C.: Focus Consultants.
[109] Elliott, E., & Gordon, R. (Eds.). (2005). New Directions in Restorative Justice (1st ed.). Willan. https://doi.org/10.4324/9781843926429.

processes. In addition, statistical and pre and post restorative justice meeting comparisons reveal no significant negative impact on victims' emotional health following participation in restorative justice.[110]

High levels of satisfaction have been shown by offenders with the restorative justice preparation process. Participating in restorative justice conferences also aided in offenders' reintegration into the family environment. More than half of the respondents to a survey of offenders who had participated in a victim offender mediation program in Canada claimed that their involvement in restorative justice had resulted in improved relationships with their family and friends.[111]

There have been several restorative justice initiatives that have dealt with domestic violence cases, and there is mounting evidence that, in the right circumstances, such a procedure might help lower the rate of reoffending.Hampshire Constabulary, reporting on the Dove Project, stated that for the years April 2006April 2007, there was a 50% reduction in reoffending for the 23 cases that had participated in a conference, in comparison to a 27% increase for the control group. Pennell and Burford suggest that the benefits extend beyond the couple themselves, since there was also a reduction in child maltreatment for participating families.[112]

The role of an apology in cases of sexual assault is also an area of ongoing research. Apologies may or may not be a factor that enables victims to feel closure. Many victims do not attend exit meetings after a Restorative Justice meeting where the offender apologizes, in contrast to some expectations that a public apology is validating for victims.[113]

Bletzer & Koss suggest that the victim's absence from the exit meeting may indicate a preference for private closure.[114]

It is obvious that emotional exchange between the parties as a result of restorative justice has the potential to bring about an outcome of closure, be it public or private, in the aftermath of the restorative

[110] Koss, Mary P. 2013. "The Restore Program of Restorative Justice for Sex Crimes." Journal of Interpersonal Violence 29 (9): 1623–60.
[111] "The Restorative Justice Program Evaluation A Program Evaluation Of A 12 Month Restorative Justice Program For Families Impacted By Sexual Abuse." (2011).
[112] Petrillo, Madeline. 2015. "Restorative Justice in Cases of Domestic Violence." Probation Journal 62 (3): 283–84.
[113] Koss, Mary P., Karen J. Bachar, C. Quince Hopkins, and Carolyn Carlson. 2004. "Expanding a Community's Justice Response to Sex Crimes through Advocacy, Prosecutorial, and Public Health Collaboration." Journal of Interpersonal Violence 19 (12): 1435–63. https://doi.org/10.1177/0886260504269703.
[114] Bletzer, Keith V., and Mary P. Koss. "From parallel to intersecting narratives in cases of sexual assault." Qualitative health research 22, no. 3 (2012): 291-303.

justice process, whether it be an apology, an agreement or commitment, or an emotional account of the impact of the crime in the presence of the offender.[115]

It is also necessary to note that victim-offender mediation, which we will define briefly and discuss later.

6. Victim Rights In Victim Offender Mediation

Victims have a right to justice, and a right not to be further damaged secondary victimisation by the processes of dealing with the offence. This would mean that all offenders should be offered the chance to make reparation, and all victims should be offered the chance to participate in whatever legal course is to be taken with respect to the offense. Research (e.g., Marshall & Merry, 1990)[116] has confirmed that practice tends to be biased towards the interests of agencies or offenders, rather than victims, even when it is conducted extremely fairly, purely because of a bias in selection. This even applies where the offense has arisen out of a dispute with the victim, in which the victim may have been equally to blame or even more at fault.[117]

Their right to justice includes the expectation that offenders will be appropriately dealt with, and the wrongness of their actions condemned. Victims should also be provided with options for action that allow them scope to adjust their degree of involvement to the possible benefits to themselves, e.g., indirect mediation without meeting the offender, a meeting with the offender, or participation in a group conference with members of the offender's family.[118]

As indicated in the last paragraph, with the parties in victim-offender mediation unlike most other forms of mediation are not to be considered balanced or equal. Any consideration of a nationwide adoption of mediation in criminal justice will therefore have to consider that the primary concern of such services should be to serve the interests of the victim, otherwise there is no reason why victims should agree to participate in them. Most restorative justice programs have been instituted by criminal justice agencies.[119]

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[115] Goodmark, Leigh. 2011. A Troubled Marriage: Domestic Violence and the Legal System. Nyu Press -12-01.
[116] Marshall, Tony F. Restorative justice: An overview. London: Home Office, 1999.
[117] Dignan, Jim. "Repairing the damage-can reparation be made to work in the service of diversion." Brit. J. Criminology 32 (1992): 453.
[118] Marshall, T F, and S Merry. 1990. Crime and Accountability: Victim/Offender Mediation in Practice. United Kingdom.
[119] Morris, Allison, Gabrielle M Maxwell, and Jeremy P Robertson. 1992. Giving Victims a Voice: A New Zealand Experiment. Wellington, N.Z.: Dept. Of Justice.

While these agencies also perceive it as an advantage that they may thereby be able to provide greater satisfaction to victims, this is not usually their dominant motivation.

Regarding secondary victimization, participation by the victim in any process other than when required as a court witness should always be voluntary, i.e., victims should themselves be allowed to determine whether or not the potential benefits of any course of action outweigh the likely costs. Equally, the timing of mediation should be appropriate to the victim's progress in emotional readjustment, not determined by the convenience of justice agencies or offenders' interests.[120]

Their main concern in doing so is usually to have a greater impact on the offender, to justify diverting the offender either away from prosecution or to a community sentence rather than imprisonment, or to decrease the cost of dealing with the offence.[121]

Participation in mediation may help victims achieve this even more surely than if the case is left to normal justice processes, and it may also serve their other interests, of which a court takes no cognisance. Although many programs also accept referrals from the victim, the opportunity for doing this is small because the victim will usually not know when an offender has been caught.[122]

The benefit of victim-offender mediation for the victim is that the victim can personally get the answers to these questions directly from their criminal offender. Victim-offender mediation fundamentally respects the victim's need to be involved at every stage of the mediation for maximum satisfaction.[123]

View of reasonableness In the event the criminal court excludes the victim from directly participating in the criminal proceedings, the victim may find it unfair and unreasonable. It is important to note that the intention is not to let the victim individually decide what the punishment for the offender should be, but to allow the victim to have a say in an outcome favourable to him, or to his satisfaction.[124]

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[120] Jonas-van Dijk, Jiska, Sven Zebel, Jacques Claessen, and Hans Nelen. "Victim–offender mediation and reduced reoffending: Gauging the self-selection bias." Crime & Delinquency 66, no. 6-7 (2020): 949-972.

[121] Joyce, Sarah, and Kevin M. Thompson. 2017. "Do Victim Impact Panels Reduce Drunk Driving Recidivism?" Restorative Justice 5 (2): 251–66. https://doi.org/10.1080/20504721.2017.1343418.

[122] Umbreit, Mark S. 1994. "Victim Meets Offender: The Impact of Restorative Justice & Mediation." Experts.umn.edu. https://experts.umn.edu/en/publications/victim-meets-offender-the-impact-of-restorative-justice-amp-media.

[123] Ferguson, Jean. "Professional discretion and the use of restorative justice programs in appropriate domestic violence cases: An effective innovation." Crim. L. Brief 4 (2009):3.

[124] Pelikan, C. (2002). Victim-offender-mediation in domestic violence cases. A comparison of the effects of criminal law intervention: the penal process and mediation. Doing Qualitative Research, Forum Qualitative Sozialforschung / Forum: Qualitative Social Research [On-line Journal], 3(1). http://www.qualitative-research.net/fqs-texte/a2324/1-02pelikan-e.htm.

When the victim is involved in every stage of the justice procedure they elect to go forward with, they will be satisfied that they did what they could within their power.

This form of mediation and justice process gives a chance to the victim to recuperate from the deep, traumatizing effects of the crime, mentally and emotionally, by allowing them to sit face-to-face with their offenders and talking to them at intervals convenient to them. The idea of justice differs from person to person, and it is important in a case where the victim is affected, that he has a say in what would bring him justice. The fact that the restorative justice system adds the human factor while delivering justice, is the main reason that it benefits the victim.[125]

Victim-offender mediation supports the view of victims being directly involved; they find the procedure more reasonable for themselves. Once the victim has the responses to these questions, when they are given the opportunity to reflect on them, they also have the chance to be heard, and more importantly, it allows them to directly say it to the offender. This has a liberating advantage for the victim since it relieves them of the questions about the crime that daunt them, as they can directly get answers from the offender.[126]

According to Marshall, the primary objectives of restorative justice are to attend fully to the victim's needs; to prevent re-offending by reintegrating the offender into the community; to enable offenders to assume active responsibility for their actions; to recreate a working community that supports the rehabilitation of offenders; and to provide the means of avoiding the escalation of legal justice processes.[127]

Restorative justice therefore positions the victims at the forefront, enabling them to participate and have some control over their conflict with the offender. The unquestionable fact that restorative justice's goals are significantly different from those of the traditional criminal justice system is brought to light by the objectives of this formal justice alternative.[128]

[125] Karkošková, Slávka. "Conditions of Victim-Offender Mediation in Cases of Intimate Partner Violence." Resolving Disputes in the 21st Century, 2013.
[126] Kaul, Tulika. "A Guide to Victim-Offender Mediation: An Alternative to the Criminal Justice System." Ct. Uncourt 6 (2019): 19.
[127] Marshall, Tony F. Restorative justice: An overview. London: Home Office, 1999.
[128] Dungdung, Anubhuti. 2011. "Restoring Justice: Introduction to Prospects and Performances of Restorative Justice." SSRN Electronic Journal. https://doi.org/10.2139/ssrn.1969809.

Regarding the operational mechanism of restorative justice, Gehm and Zehr allege that "Forgiveness" is the way forward for victims involved in restorative justice conferences. No professional support mechanisms are in place for the victims when they confront their offenders during the conference, and this is an obvious pitfall of restorative justice. Daly, on the other hand, maintains that many victims reported that they felt worse after the restorative conference. The subjectivity demonstrated by those who advocate restorative justice is a cause for concern, as objective scholars will not accept restorative justice as the answer to the problems of the criminal justice system without verified facts.[129]

Mediation is a method where in the interests of both parties are considered and the main goal to be achieved is the mutual and amicable settlement between the parties. Through the active participation of the parties themselves, solutions are brought about that may
not have been possible in a court of law. Both parties compromise and arrive at a settlement that they may be satisfied with.[130]

Recourse to mediation; it is the public prosecutor who receives complaints and has the option, among others, of suggesting mediation to the parties to the conflict. Secondly, mediation is mainly recommended for violent offenses (physical and moral abuse). For one thing, mediation is mostly used when the parties are acquainted (72% of cases).

It should be remembered that according to the prevailing codes of ethics, mediators are independent and impartial and have no decision-making power. Their role is simply to enable the parties to communicate and to help them uncover a mutually satisfactory solution. Either party may decide to interrupt the mediation at any point. Their only power consists in the ability to interrupt mediation in cases of violence or a lack of compliance with the rules of mutual respect between the parties.[131]

Outcome of mediation: The need for mutual consent is not a vain claim, since about 40% of protagonists turn down mediation. Either the parties are not present at the appointments set by the mediator, or they explicitly reject mediation at the beginning of the process or later on. A few studies

[129] Bletzer, Keith V and Mary P. Koss. “From Parallel to Intersecting Narratives in Cases of Sexual Assault.” Qualitative Health Research 22 (2012): 291 - 303.
[130] Rachael M. Field, "Mediation and the Art of Power (Im)Balancing," Queensland University of Technology Law Journal 12 (1996): 264-273.
[131] Pelikan, Christa. "Victim offender mediation in domestic violence cases—A research report." In United Nations Crime Congress: Ancillary Meeting, Vienna, Austria: http://www. restorative justice. org/rj3/UNBasicPrinciples/AncillaryMeetings/Papers/RJ_UN_CPelikan. htm. 2000.

show that expression of the emotional dynamics, bridled in the traditional judicial process, is a necessary requisite for an effective restorative process, for both victims and offenders.[132]

Still and all, these dynamics must not lapse into violence and the settling of scores but must be the moving force in a process of meaning-making, through increased awareness of one's own responsibility, discovery of otherness, and a change in the way the parties view the conflict. The impact of the process rests on the mediator's talent, theoretical and interpersonal resources, and ability to set up a reassuring context and create a climate of empathy and comprehension as well as elicit thoughtfulness and creativity in the search for solutions.[133]

Victim-offender mediation has been practiced with juveniles since 1985 and adults since 1992, and mediators are full-time practitioners of mediation and trained social workers.[134]

They invite the couple if both parties agree to go to the Victim-Offender Mediation Center and first speak with them separately: The male mediator talks to the man, and the female mediator talks to the woman. In cases of domestic violence, where the state prosecutor diverts a case from court to see if mediation can help, the mediators work in pairs, one man and one woman. The session starts with the mediators telling the stories of each party while they listen; then the parties have the chance to correct or modify their story. This "distancing" effect promotes "recognition", which is a prerequisite of empowerment: balancing existing power imbalances and supporting the weaker party.[135]

7. Victim Offender Mediation As Reinforcement Of Change

7.1. Victim Offender Mediation Supporting Separation

There are cases where mediation can empower women to negotiate separation arrangements and future relationships based on this (e.g., how they will behave if they meet again by chance).

[132] Harris, Nathan, Lode Walgrave, and John Braithwaite. 2004. "Emotional Dynamics in Restorative Conferences." Theoretical Criminology 8 (2): 191–210. https://doi.org/10.1177/1362480604042243.
[133] Faget, Jacques. 2004. "Mediation and Domestic Violence." Champ Pénal, no. Vol. I (February). https://doi.org/10.4000/champpenal.356.
[134] Reno, Janet, Daniel Marcus, Mary Lou Leary, and Kathryn M. Turman. "Guidelines for victim-sensitive victim-offender mediation: Restorative justice through dialogue." (2002).
[135] Turvey, Brent E., and Jodi Freeman. "Victim Lifestyle Exposure." Forensic Victimology: Examining Violent Crime Victims in Investigative and Legal Contexts (2013): 143.

Victim-offender mediation at its limits: These are cases where the woman does not have the resources (internal and external) to stand up for her rights, and where, even if agreement is reached during mediation about future behavior, it breaks down and violence re-occurs.
The conclusions drawn by Pelikan were:
In victim-offender mediation, to promote and enhance a process of empowerment, the existence of personal resources for both the victim and the offender is a prerequisite.

To sum up, she coined the phrase "Men don't get better through victim-offender mediation, but women get stronger."The potential or strength of the mediation process lies in reinforcing processes of empowerment or liberation that are already on the way.

But the "suitable cases" can only be ascertained by a process involving a step-by-step assessment process involving mediation and victim support services.

Pelikan's conclusion was that victim-offender mediation could be helpful in a wide range of cases in reinforcing empowerment and freedom from fear and violence within a relationship. as well as a high degree of satisfaction from women concerning victim-offender mediation, especially in cases of domestic violence.[136]

The message of the research done by Pelikan is that one cannot approach domestic violence cases with a "one size fits all" response, as they are not all the same.

Christa Pelikan observed 33 victim-offender mediation sessions and conducted 21 interviews with women after the mediation sessions. In 2008, she sent a postal questionnaire to 900 women who had been through victim-offender mediation in 2006 and obtained 162 responses, although many questionnaires had been undeliverable. The Act has an important symbolic aspect in reinforcing the view that domestic violence is unacceptable, so that victims are more likely to call the police earlier in the chain of events.

The conclusion was that women's empowerment has been reinforced by the new by victim-offender mediation, and that there is a new collective mentality in society, in which keeping violence out of

[136] Fergus Mcneill, and Kristel Beyens. 2013. Offender Supervision in Europe. Houndmills, Basingstoke, Hampshire; New York: Palgrave Macmillan.

intimate relationships has become a matter of course, leading to some men changing their attitudes and behaviour.[137]

This research still showed a large contribution of mediation to the empowerment of women. This is generated by the fact that 36% of the sample entered mediation after a first act of violence. These were not considerable numbers (about 14% of all cases), but it shows that more men than before were capable and willing to change to help improve communication between the partners, especially where they decided to stay together. One important change which influenced mediation was the Austrian Protection Against Domestic Violence Act 1997.[138]

Glaeser also argued that mediation is often attractive to parties because there are several ways in which court procedures may be unhelpful in domestic violence cases:

In his opinion, the perpetrator does not have to take responsibility; the judge decides, the victim often feels guilty if a sentence is passed, the perpetrator blames the victim, and if the victim is in a passive role of witness, the victim can be re-victimised by the process. However, certain preconditions are needed for mediation:

The victim must agree, the violence must stop, the perpetrator must take responsibility, the perpetrator is the only one to blame, not the victim, the process only goes ahead with the agreement of the victim.[139]

Mediation in cases of domestic violence was also researched by Christa Pelikan, both by observation of 30 mediations and by follow-up interviews, separately with each partner, of up to two hours.[140]

There are arguments for and against using the victim offender mediation application in domestic violence cases, which we will discuss in more detail below.

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[137] Umbreit, M. S., Coates, R. B., & Vos, B. (2004). Victim-offender mediation: Three decades of practice and research. Conflict Resolution Quarterly, 22, 279-303.

[138] "Background Paper-Safe Digital Spaces: Protection of Women and Girls from Technological Violence." 2020. Journal of Culture, Society and Development, February. https://doi.org/10.7176/jcsd/56-08.

[139] Liebmann, Marian. 2007. Restorative justice: how it works. Philadelphia, PA: Jessica Kingsley Publishers. http://site.ebrary.com/id/10196776.

[140] Liebmann, Marian, and Lindy Wootton. 2008. "Restorative Justice and Domestic Violence/ Abuse a Report Commissioned by HMP Cardiff Funded by the Home Office Crime Reduction Unit for Wales." https://restorativejustice.org.uk/sites/default/files/resources/files/Restorative%20Justice%20and%20Domestic%20Violence%20and%20Abuse.pdf.

8. Arguments Against The Use Of Victim Offender Mediation Application On Cases Of Domestic Violence

Jill Filipovic argued:

"I believe restorative justice can, in many circumstances, help to set that kind of change in motion. But radical, transformative change can't come on the backs of victims of violence; it can't come at the expense of their safety or their mental health or their sense of security in their own communities".[141]

Filipovic presupposes that domestic violence victims all want to end relationships with offenders, which is often not the case, particularly in communitarian societies like many indigenous tribes. She combines a victim's need for safety and mental health with a need to cut an offender out of the picture, which could contradict the wishes even of a victim who chooses to press charges in court, much less one who takes a restorative justice approach. Nevertheless, Filipovic and many other observers fear that restorative justice processes pay inadequate attention to the needs of victims, particularly the need for safety and peace of mind.[142]

Rather than positioning restorative justice as an alternative to retributive justice, Hudson contends:

"If the aims and principles of retributive and restorative justice are integrated, with the targets of restorative justice (reintegration, empowerment of victims, reduction of offending, and building of more cohesive, peaceful communities) being pursued within the constraints of due process safeguards and standards such as proportionality and equitable treatment, then better justice will be possible".[143]

Victims are more likely to feel intensely suspicious and distrustful of any restorative justice process, given that an apology from the person responsible for causing harm is considered to be central. But given the prevalence of the apology cycle in cases of domestic violence, it is unlikely that the person harmed will be persuaded that "he means it this time".[144]

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[141] Filipovic, Jill. "Offensive feminism: The conservative gender norms that perpetuate rape culture, and how feminists can fight back." Yes, means yes (2008): 13-27.
[142] Filipovic, Jill. "Restorative justice in domestic violence cases is justice denied".
[143] Hudson, Barbara. "Restorative justice and gendered violence: Diversion or effective justice?" British Journal of Criminology 42, no. 3 (2002): 616-634.
[144] Renzetti, Claire M, Diane Follingstad, and Ann L Coker. 2017. Preventing Intimate Partner Violence: Interdisciplinary Perspectives. Bristol, Us: Policy Press.

"The Influence of Support Persons A related problem is that standard restorative justice conferences will invite the support person of the person responsible to attend. The reason for doing so is that his family and friends are uniquely able to condemn his actions, whilst ensuring that he knows that they still love and respect him as a person, a process that John Braithwaite calls "reintegrative shaming".[145]

Restorative justice conferences also invite the support person of the person harmed, and this creates a similar issue. In many cultures and religious communities, a woman who separates from or divorces her husband is strongly condemned. She would thereby bring shame not only to herself, but to her wider family group. For this reason, the family and friends of a woman who has been harmed by domestic violence can place a great deal of pressure on her to withdraw her accusations and be "reconciled"to her abusive husband.[146]

The underlying assumption here is that women are not considered equal to men, and so they should submit to and remain with their husband even if he is violent. A facilitator might exclude such family members and friends from the process, but their influence will remain. So again, standard restorative processes on their own don't have the capacity to address this issue, and yet it clearly has the potential to undercut the restorativeness of the process.[147]

Standard restorative justice processes have not been designed, and facilitators are not typically equipped to be able to offer adequate protection from this kind of hidden manipulation or coercion. Even if the facilitators could do so, this moment of "empowerment" could mislead the person harmed into agreeing to an outcome plan that will be unsafe for her.[148]

Restorative Justice is designed to enable the participants to engage in acts such as: the person who has caused harm taking responsibility for their actions and offering an apology; the person harmed saying how they were affected; responding to the apology; and so on. But this work of moral repair can be carried out even where the participants do not have a pre-existing relationship and do not intend to start

[145] Best, Joel, and John Braithwaite. 1990. "Crime, Shame and Reintegration." Social Forces 69 (1):318. https://doi.org/10.2307/2579648.
[146] Oxford University Press, 2010." Criminal Justice Policy Review 21 (4): 524–26.
[147] King, Laura L. 2010. "Book Review: James Ptacek (Ed.) Restorative Justice and Violence against Women.
[148] Cheon, Aileen, and Cheryl Regehr. 2006. "Restorative Justice Models in Cases of Intimate Partner Violence: Reviewing The Evidence." Victims & Offenders 1 (4): 369–94.

one. The only relational connection that moral repair assumes is that each person is willing to acknowledge that they each share a common humanity.[149]

One benefit of using Restorative Justice in at least some domestic violence cases is that it can provide a non-separation option. Many women, it is argued, want to stay with their partners, but they just want the violence to stop. Yet most other domestic violence interventions, are strongly oriented toward facilitating or bringing about separation. Studies have repeatedly shown that people subjected to intimate partner violence opt out of the legal system because they love their partners and want to maintain relationships with them.[150]

In a recent study of the Bennington, Integrated Domestic Violence Court, 70% of the couples who came through the system were either still involved in their relationships or planned to continue them. The CLS's focus on punishment is inconsistent with that goal. "So, it could be argued that restorative justice might serve to honour and support a woman's decision to stay. The problem is that using restorative justice for this reason is fraught with complexity. For instance, there is strong evidence that women can choose to stay with a violent partner for reasons other than a desire to remain in a relationship with him. For example, they may not have the independent financial means to leave.[151]

Sexual violence is a part of domestic violence, as it is argued that diverting cases of sexual violence from the court system might serve to diminish the apparent seriousness of the crime by demonstrating what might be perceived as a lenient or"soft option" to the punishment of offenders.[152]

Another concern is that this might have a detrimental impact on the hard-won progress already made by the feminist movement in elevating the position of sexual violence on the political and public agendas (Schroeder, 2005).[153]

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[149] Beyond Harm: Toward Justice, Healing and Peace. 2019. Parramatta, Nsw: Relational Approaches.

[150] Hopkins, C. Quince, Mary P. Koss, and Karen J. Bachar. "Applying restorative justice to ongoing intimate violence: Problems and possibilities.". Louis U. Pub. L. Rev. 23 (2004): 289.

[151] Langdon, Jennifer J. 2019. "Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence." Contemporary Justice Review 22 (4): 412–13.

[152] "Canadian Journal of Criminology and Criminal Justice: Canadian Criminal Justice Association." 2005. Canadian Journal of Criminology and Criminal Justice/La Revue Canadienne de Criminologie et de Justice Pénale 47 (3): i–iii. https://doi.org/10.3138/cjccj.47.3.i.

[153] Braun, Kerstin. 2014. "Legal Representation for Sexual Assault Victims — Possibilities for Law Reform?" Current Issues in Criminal Justice 25 (3): 819–37. https://doi.org/10.1080/10345329.2014.12036000.

There are fears that such an informal process jeopardizes the actual safety of the survivors and future potential victims.[154]

The specific issues raised in relation to the imbalance of power include the potential for victimizing the survivor by pressuring him/her into conference participation, reaching an unsatisfactory agreement[155], responding to the offender with forgiveness and/or the offender being forced into offering an insincere apology or that offenders will use the opportunity to manipulate the survivor and further endorse the survivors' engagement in self-blame.[156]

In its report on restorative justice worldwide, two authors writing for the United Nations cited women's organizations who "have expressed concerns that a restorative approach may re-victimize women victims and not provide adequate denunciation of the offending behaviour". They also cite commentators opposed to the use of restorative justice in cases of violence against women (without mentioning male victims), "citing an absence of adequate safeguards and risks to the safety of victims".[157]

Also, there is concern over the resource intensive nature of restorative justice. It would be anticipated that cases of sexual assault may require even more extensive preparation and follow-up support for the victim, offender and their families, more specialist training of the facilitators and the fees for the services of experts in both sexual offending and sexual victimisation.[158]

The United Nations addresses the specific concern of power imbalances in cases of domestic and sexual violence. It recommends that restorative justice facilitators be specially trained in both restorative justice and the dynamics of violence, domination, and power and in the art of ensuring that the

[154] Cameron, Angela. 2006. "Stopping the Violence." Edited by Kimberly J. Cook, Kathleen Daly, and Julie Stubbs. Theoretical Criminology 10 (1): 49–66. https://doi.org/10.1177/1362480606059982.
[155] Coker, Donna. 2006. "Restorative Justice, Navajo Peacemaking and Domestic Violence." Edited by Kimberly J. Cook, Kathleen Daly, and Julie Stubbs. Theoretical Criminology 10 (1): 67–85.
[156] McNevin, Elizabeth. 2010. "Applied Restorative Justice as a Complement to Systemic Family Therapy: Theory and Practice Implications for Families Experiencing Intra-Familial Adolescent Sibling Incest." Australian and New Zealand Journal of Family Therapy (ANZJFT) 31 (1): 60–72. https://doi.org/10.1375/anft.31.1.60.
[157] Dandurand, Yvon, Curt T. Griffiths, and Vivienne Chin. "Training and effective support of comprehensive justice and security reforms: Outcomes to date and lessons learned." Publication Series-European Institute For Crime Prevention And Control 53 (2008): 53.
[158] Keenan, Marie. 2018. "Training for Restorative Justice Work in Cases of Sexual Violence." The International Journal of Restorative Justice 1 (2): 291–302.

dynamics of the restorative meeting remain positive and non-threatening and that a balance is maintained during the discussions, between victim and offender.[159]

For Daly, the central difficulty is how to show respect to victims by treating harms as serious, without melting the mistakes of over-reliance on harsh forms of punishment; and how to'' do justice'' in an unequal society. Daly argues that while restorative justice is developing some alternatives to a structurally inegalitarian reliance on prison as a solution, restorative justice must be reconciled with retributivism if harm vindication is to be accomplished. Also, he argues that there is a need to be aware of the different meanings and contexts of sexual violence, domestic violence, and family violence. Hence, gendered harms must be considered concretely, not abstractly, in deciding how to take them seriously, to denounce them in a way that vindicates the suffering and dignity of victims and that keeps open the possibility of reoffending.[160]

Proponents of restorative justice contend this approach facilitates conversations between willing victims, offenders, their families, and support networks, and increases the chance of condemning the violence, while permitting victims to express their needs and concerns.[161]

Some who promote restorative justice believe that it can better deal with the complexities of intimate violence, including when the victim is male, or the violence is bidirectional, Additionally, restorative justice may offer more options to victims who believe that prosecution does not meet their needs[162] believing it can better attend to the complexities of intimate violence, including when the victim is male, or the violence is bidirectional.[163]

Burford and Pennell's study of an FGC-based approach to family violence in Canada has shown a strong support for using restorative justice in domestic violence cases, where the study found a reduction in indicators of both child abuse/neglect and abuse of mothers/partners after the intervention, advancement in children's development, and an extension of social supports. One year

[159] Griffiths, Curt Taylor, Yvon Dandurand, and Danielle Murdoch. The social reintegration of offenders and crime prevention. Vol. 4. Ottawa, Ontario, Canada: National Crime Prevention Centre, 2007.
[160] Cousins, Carolyn. "Restorative Justice and Family Violence." Australian Social Work 57, no. 2 (2004): 197–99. doi:10.1111/J.1447-0748.2004.00136.X.
[161] Curtis-Fawley, Sarah, and Kathleen Daly. 2005. "Gendered Violence and Restorative Justice." Violence against Women 11 (5): 603–38. https://doi.org/10.1177/1077801205274488.
[162] Mills, Linda G. 1999. "Killing Her Softly: Intimate Abuse and the Violence of State Intervention." Harvard Law Review 113 (2): 550. https://doi.org/10.2307/1342332.
[163] DeKeseredy, W. S. 2004. "Insult to Injury: Rethinking Our Responses to Intimate Abuse. By Linda G. Mills (Princeton, New Jersey, 2003, 178pp.)." British Journal of Criminology 44 (4): 621–23. https://doi.org/10.1093/bjc/azh060.

after the conferences, the incidents of abuse/neglect were 50% less compared to the year before, while incidents increased significantly for 31 families in the control group, who did not participate in a restorative justice intervention.[164]

Physical and emotional safety must be protected in any restorative justice process, but this requirement has additional gravity in domestic violence cases.[165]

Frederick and Lizdas say that regarding domestic violence cases, restorative justice practices "Have not accounted for one of the chief characteristics of most domestic violence cases: the existence of ongoing danger occasioned by the victim's resistance to the batterer's authority and control ".[166]

Safety is a concern not only for the victim, but also for anyone else involved in restorative process that addresses violence: the victim's family, community participants, and the facilitator and others potentially affected by the intervention, including the parties' children and possible future partners of the offender.[167]

The victim's emotional safety may be at risk before, during, and after a discussion with the offender. Even the idea of meeting with him can be stressful or even retraumatizing. Chronic trauma, which is a feature of domestic violence, amplifies the symptoms of post-traumatic stress disorder, leaving the person continually hypervigilant, anxious, and agitated.[168]
Rubin, for example, quotes women who report dramatic physical reactions being triggered simply by their abuser's presence or by a look or mannerism she has learned to associate with imminent violence.[169]

Julie Stubbs says that, in the restorative justice literature, there seems to be a common focus on safety during a restorative justice process. Moreover, there seems to be little recognition of ongoing safety concerns after the restorative justice conference, sentencing circle, or mediation.[170]

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[164] Strang, Heather, and John Braithwaite. 2002. Restorative Justice and Family Violence. Cambridge; New York: Cambridge University Press.
[165] Busch, Ruth. "12 Domestic Violence and Restorative Justice Initiatives: Who Pays if We Get it Wrong?" Restorative justice and family violence (2002): 223.
[166] Lizdas, Kristine C. "The Role of Restorative Justice in the Battered Women's Movement Loretta M. Frederick." (2003).
[167] Edwards, Alan, and Jennifer Haslett. "Domestic violence and Restorative justice: Advancing the dialogue." In the 6th International Conference on Restorative Justice, Vancouver, BC. 2003.
[168] Herman, Judith Lewis. Trauma and recovery: The aftermath of violence–from domestic abuse to political terror. Hachette UK, 2015.
[169] Rubin, Pamela. Restorative justice in Nova Scotia: Women's experience and recommendations for positive policy development and implementation: Report and recommendations. Ottawa, Ontario, Canada: National Association of Women and the Law, 2003.

Even when a victim can make an informed and fully voluntary choice to take part in a victim-offender dialogue, restorative justice principles also require that her participation be free and voluntary throughout, unencumbered by others' expectations or demands. Many scholars stress the danger of assuming that domestic violence victims have this freedom.[171]

When one partner has been controlling the other partner through violence, then the violent partner has established greater, if not complete, power to control decisions they truly share. The victim may feel unsafe presenting any kind of challenge to the abuser, fearing that he will retaliate afterward by hurting her and/or her children.[172]

This power imbalance may not be evident to the person(s) facilitating the victim-offender dialogue. The violent partner may not need to assert this power at all because the victim knows that her safety depends on anticipating and yielding to his wishes. Or he may reassert his power during a facilitated dialogue, through covert signals not apparent to anyone but the victim.[173]

Goel says, " The sentencing circle thus encourages the Aboriginal woman, once again, to place her community's interests ahead of her own. Even if, as a woman, she desires protection, as an Aboriginal person, she is expected to reconcile with the offender. Her acquiescence is driven by a hope for long term gain and her own values, which include sacrifice for the good of the group and an understanding of collective rights ".[174]

For Ruth Busch, "facilitators must be highly skilled in the dynamics of domestic violence, lethality risk assessment, and domestic violence screening techniques in order to recognize the warning signs for further violence and address the high levels of emotion and duress which might be involved".[175]

Crnkovich argues that any alternative to court processes must have a strong enough infrastructure to sustain itself, "including trained and skilled community service providers who are paid for their services.

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[170] Stubbs, Julie. Restorative justice, domestic violence, and family violence. Australian Domestic and Family Violence Clearinghouse, UNSW, 2004.
[171] Edwards, Alan, and Susan Sharpe. "Restorative justice in the context of domestic violence: A literature review." Edmonton, Alberta: Mediation and Restorative Justice Centre, forthcoming at www. mrjc. ca (2004).
[172] Koss, Mary P. "Blame, shame, and community: justice responses to violence against women." American psychologist 55, no. 11 (2000): 1332.
[173] Rubin, Pamela. Restorative justice in Nova Scotia: Women's experience and recommendations for positive policy development and implementation: Report and recommendations. Ottawa, Ontario, Canada: National Association of Women and the Law, 2003.
[174] Goel, Rashmi. "No women at the center: The use of the Canadian sentencing circle in domestic violence cases." Wis. Women's LJ 15 (2000): 293.
[175] Busch, Ruth. "12 Domestic Violence and Restorative Justice Initiatives: Who Pays if We Get it Wrong?" Restorative justice and family violence (2002): 223.

"If an alternative is reliant upon a significant volunteer component, it will be unreliable and will vary considerably in the level of services" The Alternative versus [176]Julie Stubbs agrees that "poorly funded initiatives based on volunteer work by community members are unlikely to be effective or sustainable over time".[177]

Rubin's report identifies additional concerns about the idea of using volunteer facilitators and about the idea of using volunteer support workers. Survivors of violence and experienced women's advocates both rejected the idea, expressing concerns about insufficient training in domestic violence issues, the potential for partiality based on relationships with abusers in the community; the potential that volunteers' safety could be threatened along with the victims', and volunteers' lack of professional credibility.[178]

Effective responses to domestic violence require that practitioners, both in case development and in the dialogue session, explore the trends, patterns, and circumstances of his abusive behaviours. To accomplish this, an extensive screening model is highly recommended and should not only be congruent with the principles of victim safety and offender accountability, but also reflect the wide variety of ways that abuse can be inflicted and experienced.[179][180]

For restorative justice practitioners, "concern for safety" sounds like a given.
However, in the context of working on domestic violence cases, the question of the scope of this concern arises on both a practical and a fundamental philosophical level.
Domestic violence and restorative justice: moving the dialogue forward. From a philosophical perspective, restorative justice has been criticized for lacking a sound and detailed analysis of gendered harms.[181]

In terms of harm causation, the core principles of restorative justice include global statements that harm is wrong and should not occur. What is missing from the restorative justice literature is an

[176] Crnkovich, Mary. "The role of the victim in the criminal justice system–Circle sentencing in Inuit communities." Public perceptions of Justice (1995).
[177] Stubbs, Julie. "Feminist Challenges to Restorative Justice." Restorative justice and family violence (2002): 42.
[178] Rubin, Pamela. Restorative justice in Nova Scotia: Women's experience and recommendations for positive policy development and implementation: Report and recommendations. Ottawa, Ontario, Canada: National Association of Women and the Law, 2003.
[179] Girdner, Linda K. "Part 3. Models of practice. Mediation triage: Screening for spouse abuse in divorce mediation." Mediation Quarterly 7, no. 4 (1990): 365-376.
[180] Hudson, Barbara. "Restorative justice and gendered violence: Diversion or effective justice?" British Journal of Criminology 42, no. 3 (2002): 616-634.
[181] Stubbs, Julie. "Feminist Challenges to Restorative Justice." Restorative justice and family violence (2002): 42.

analysis of the contextual specifics of domestic violence, an analysis that reflects the connections between patriarchal traditions/beliefs/structures and the experiences of women who have either lived in or survived intimate relationships marked by abuse. Such an analysis would help increase women's safety by helping practitioners understand what they are seeing, and the risks associated with the choices they and participants are making.[182]

In the absence of this analysis, practitioners can fall into many traps. Dorothy Della Noce points out that whether a practitioner is aware of the theories (or worldviews) that shape his or her practice, "there is always a theory". This means that therapists confronted with a domestic violence case would interpret the case before them without relying on a supportive framework for understanding.[183]

This means that therapists confronted with a domestic violence case would interpret the case before them without relying on a supportive framework for understanding.

Therapists may support the perpetrator's trivialization of violence, interpret it as conflict or a "communication problem," or commit other troubles that distract from seeing violence and abuse as a problem. These troubles undermine the victim's experience and put his or her safety at great risk.[184]

Hilary Astor wrote that,"Victim-offender mediation places fewer barriers between the perpetrator and the target of his violence." It offers opportunities for continued contact with the target of his violence where she may be unprotected and where violence and coercion can continue"[166,] specifically, some observers fear that an offender may "abuse the system".[185]

As we presented the arguments against restorative justice in general, we will also be speaking about the ones against using victim offender mediation in specific.

The first argument says that mediation fails to protect and empower domestic violence victims because its methods and objectives are incompatible with those necessary to end domestic violence within a relationship.

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[182] Braithwaite, John. "Principles of restorative justice." Restorative justice and criminal justice: Competing or reconcilable paradigms 1 (2003): 5-6.
[183] Della Noce, Dorothy J. "Seeing theory in practice: An analysis of empathy in mediation." Negotiation Journal 15, no. 3 (1999): 229-244.
[184] Federal/Provincial/Territorial Ministers Responsible for the Status of Women (Canada). Assessing Violence Against Women: A Statistical Profile. Status of Women Canada, 2002.
[185] Koss, Mary P. "Blame, shame, and community: justice responses to violence against women." American psychologist 55, no. 11 (2000): 1332.

It argues that victim offender mediation may be ineffective and inappropriate in cases with overtones of domestic violence because while the objective of mediation is to resolve conflict or disagreements between parties, domestic violence is rooted in a struggle for power and control. It mentions that an abuser can use the threat of violence to maintain power over every detail of his victim's life.[186]

Critics argue that if violence is caused by control issues rather than genuine conflict, "both the ideology and the practice of mediation are incompatible with a culture of battering."
In their opinion, it can be dangerously disempowering to force a battered woman into a dispute resolution scheme where there may be no conflict to resolve, only a pattern of domination and control by her abuser. In fact, batterers admit they want to "scare their partners into obeying and will lie, deny, and minimize the effects of their violence."[187]

Critics oppose mediation in cases involving domestic violence because it potentially places victims at risk for future violence. Therefore, the commentators argue, mediation is inappropriate in such cases. This attitude, however, makes other experts worried that victimization of offenders would eclipse their wrongdoing, relativise the arising needs and result in secondary victimization of the victim.[188]

In addition, although mediation is ideally an empowering process for all participants, it arguably risks disempowering abused women by invalidating the seriousness of the abuse inflicted upon them. In sum, in cases where domestic violence is present, mediation will fall short of its goal of empowerment and may be detrimental to domestic violence victims.[189]

Further, the procedural structure of mediation can work counter to meditation's goal of empowerment in cases involving domestic violence for several reasons. Critics have argued that mandatory mediation of cases involving domestic violence is another example of the courts shirking their responsibility to treat domestic violence as a crime.[190]

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[186] Kelly, Joan B. 1995. "Power Imbalance in Divorce and Interpersonal Mediation: Assessment and Intervention." Mediation Quarterly 13 (2): 85–98. https://doi.org/10.1002/crq.3900130203.
[187] Yellott, Ann W. 1990. "Mediation and Domestic Violence: A Call for Collaboration." Mediation Quarterly 8 (1): 39–50. https://doi.org/10.1002/crq.3900080106.
[188] Saskatchewan. Provincial Association Of Transition Houses Of Saskatchewan. 2000. Restorative Justice: Is It Justice for Battered Women? Regina: Paths (Provincial Association of Transition Houses Of Saskatchewan.
[189] Holly Joyce, "Mediation and Domestic Violence: Legislative Responses," Journal of the American Academy of Matrimonial Lawyers 14, no. 2 (1997): 447-468.
[190] Vestal, A. (2007). Domestic violence and mediation: Concerns and recommendations. Repéré à http://www. mediate. com/articles/vestala3. cfm.

Another argument against mediating cases with a history of domestic violence is that a battered woman's fear of violent retribution prevents her from asserting her own best interests, which results in agreements that are unfair to victims.

As mediation is a future oriented process, mediators might discourage discussion of past abuse to preserve the prospective approach of the process.

Another factor making mediation incompatible with domestic violence is that mediation requires cooperation. Forcing abused women to mediate will in most cases subject them to face-to-face contact with their abusers, thereby potentially exposing them to further violence. Unless a jurisdiction requires strict confidentiality forbidding the mediator from making recommendations to the court, "a frightened battered woman may disclose information that the abuser may use in court against her." It generally requires contact between the victim and abuser which places the victim's safety at risk. Instead, sending cases to mediation sends a message to the batterer and the battered that "violence is not so serious as to compromise the parties' ability to negotiate as relative equals" which blurs the message of offender accountability. In addition to the risk imposed by the face-to-face interaction the mediation process imposes, mediated agreements may give the batterer frequent access to his victim under the terms of child custody and visitation provisions. Domestic violence, the substance of which is the controlling and intimidation of victims by offenders, severely undermines the victim's strength to a point where they become unable to express their needs freely and make their own decisions.[191]

The victims might thus be unable to defend their lawful interests and during mediation may prefer solutions favourable to the offenders; as a result, mediation may be experienced as a secondary victimization of the victims. Their relationship with the offenders deprives victims of their freedom, making them live in fear, servitude, and submission.[192]

[191] Szmania, Susan J. 2006. "Mediators' Communication in Victim Offender Mediation/Dialogue Involving Crimes of Severe Violence: An Analysis of Opening Statements." Conflict Resolution Quarterly 24 (1): 111–27. https://doi.org/10.1002/crq.161.
[192] Holtzworth-Munroe, Amy, Connie J. Beck, Amy G. Applegate, Jeannie M. Adams, Fernanda S. Rossi, Lily J. Jiang, Claire S. Tomlinson, and Darrell F. Hale. "Intimate partner violence (IPV) and family dispute resolution: A randomized controlled trial comparing shuttle mediation, videoconferencing mediation, and litigation." Psychology, public policy, and law 27, no. 1 (2021): 45.

Some women's advocates argue that because of the inherent inequality that exists between victims and offenders, the traditional adversarial process of the criminal justice system could better serve victims of domestic violence.[193]

In their opinion, the fact that the victims and offenders are expected to engage in the offered negotiation as equals could imply that violence is not such a despicable offense, and that the offender may avoid being held liable.[194]

For them, as well as manipulation and threats from the offender, there is also another potential risk related to victim offender mediation: the danger that the offenders could use the negotiation contact to pursue their victims after the partners' separation to their new address, which was supposed to remain undisclosed.

Another concern that victim offender mediation is too focused on the needs of the offender at the expense of those of the victim is also an argument against the use of victim offender mediation in domestic violence cases. Opponents of victim offender mediation in domestic violence believe that, as proven by statistics, robust legislation and uncompromising imprisonment of offenders are the best preventions of domestic violence.[195]

Restorative justice philosophy accentuates the role of the community, which may also
bear a share of the responsibility for crime's causes and consequences. The community of people around the victim and the offender should therefore also take part in solving the situation resulting from the crime. It should also be noted that a lack of specially trained mediators is the most criticizes aspect associated with the application of victim offender mediation in domestic violence cases.[196]

[193] "Developments in the Law: Legal Responses to Domestic Violence." 1993. Harvard Law Review 106 (7): 1498. https://doi.org/10.2307/1341934.
[194] Vanderkool, Lois, and Jessica Pearson. 1983. "Mediating Divorce Disputes: Mediator Behaviors, Styles and Roles." Family Relations 32 (4): 557. https://doi.org/10.2307/583696.
[195] The Dangers of Mediation in Domestic Violence Cases. In: Cardozo Womenõs L.J. 235, 236-37 (2003).
[196] Szmania, Susan J. 2006. "Mediators' Communication in Victim Offender Mediation/Dialogue Involving Crimes of Severe Violence: An Analysis of Opening Statements." Conflict Resolution Quarterly 24 (1): 111–27. https://doi.org/10.1002/crq.161.

9. Arguments In Favour Of The Use Of Victim Offender Mediation Application On Domestic Violence Cases

In respect to that, the advocates of victim offender mediation usage in domestic violence cases believe that while the criminal justice model and the classical type of mediation model deliver predetermined outcomes, the restorative justice model is based on creating conditions for the rehabilitation process rather than aiming to reach a specific result.[197]

The advocates of victim offender mediation in domestic violence cases point out that, unlike in the classic type of mediation used in disputes not qualified as criminal offenses, parties in mediation in restorative justice are differentiated as a victim and an offender (i.e., not as parties to a non-criminal dispute). Victim offender mediation therefore does recognize victims as persons, stressing and upholding their need to reveal the truth, to be heard by others, and to express their emotions.[198]

While some experts disqualify the victim offender mediation application in domestic violence cases due to the imbalance between the mediation parties, another opinion group points out that the restorative justice model provides an opportunity for the restoration of power on the side of victims of domestic violence. The strengthening of previously unheard voices has an immensely significant value in the restorative justice philosophy, and it is our respectful listening to the victim story that enables such a strengthening. The restoration justice process thus makes the victims actively participate in tackling their post-traumatic situations.[199]

Power restoration is also stimulated by the victim's opportunity to address questions to the offenders and to define the conditions for the repair of the injury and for contact with the offenders. Victim offender mediation supporters believe that power imbalances between victims and offenders can be re-balanced in battering cases too, and they present various methods for redressing the imbalance. Rectification extends this opinion by observing that the power imbalance is relative, as both partners

[197] Price, Barbara R, and Natalie J Sokoloff. 2006. The Criminal Justice System and Women: Offenders, Prisoners, Victims, and Workers. Brantford, Ont.: Resource Services Library.

[198] "Crime, Shame and Reintegration. By J. Braithwaite. (Pp. 226; Illustrated; £9.95.) Cambridge University Press: Cambridge. 1989." 1989. Psychological Medicine 19 (04): 1053. https://doi.org/10.1017/s003329170000605x.

[199] Presser, Lois, and Emily Gaarder. 2000. "Can Restorative Justice Reduce Battering? Some Preliminary Considerations" 27 (1). http://www.antoniocasella.eu/restorative/Presser_2000.pdf.

may have or might have had a different degree of influence in various areas of their shared life, such as childcare or household management.[200]

Relatives have a lot of possibilities to shame the offender while keeping him a member of the family, thus making prevention more efficient.[201]

Similar logic gives ground also to the routine activity theory according to which violence is a result of an opportunity, i.e. The presence of a suitable target and the absence of people capable of deterring the offender from his action.[202]

Restorative justice-based programs can provide a legitimate forum for needed community intervention in family violence. They refer, for instance, to their integrative shaming theory derived from the family life model, in which family members who do something wrong are not forgiven unless they express remorse.[203]

The reservation based on the opinion that the female victim's safety is put at risk by victim offender mediation is opposed by the assertion that safety can in fact be served, with experts in the area listing a wide range of potential measures.[204]

Another argument supporting the use of victim offender mediation in domestic violence cases is the community's promising potential. Since they can make unexpected visits and have access to intimate information, family members may play a significant role in domestic violence deterrence. The community's involvement in addressing the post-traumatic and post-crime situation arising from domestic violence is very important for prevention of re-offending. Victims' rights to determine their own needs and the means of attaining them are more likely to be protected within a less formal restorative justice setting than in a criminal justice jurisdiction on its own. For couples who wish to end the violence but not the relationship, the restorative justice model presents a chance to comprehend the dynamics

[200] Hamline, Mitchell, Open Access, and Nancy Steegh. 2003. "Mitchell Hamline School of Law Yes, No, and Maybe: Informed Decision Making about Divorce Mediation in the Presence of Domestic Violence Repository Citation." https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1207&context=facsch.

[201] "Domestic Violence and Restorative Justice: Answering Key Questions." n.d. Restorative Justice. http://restorativejustice.org/rj-library/domestic-violence-and-restorative-justice-answering-key-questions/3117/#sthash.meLL8chS.dpbs.

[202] Cohen, Lawrence E, and Marcus Felson. 1979. "Social Change and Crime Rate Trends: A Routine Activity Approach." American Sociological Review 44 (4): 588–608. https://doi.org/10.2307/2094589.

[203] Strang, Heather, and John Braithwaite. 2002. Restorative Justice and Family Violence. Cambridge; New York: Cambridge University Press.

[204] Simmonds, Lesley. 2003. "Restorative Justice for Juveniles: Conferencing, Mediation and Circles." Crime Prevention and Community Safety 5 (1): 77–78. https://doi.org/10.1057/palgrave.cpcs.8140142.

of violence. Offenders tend to get trapped in a vicious circle of shame and anger, compensating for their feeling of shame with rage and escalated violence.[205]

Some authors think that the criminal justice system fails to address the victim's individual needs and ignores the fact that the victim and the offender used to share most things over a period in their lives, including childcare.[206]

Perhaps the strongest argument in favour of the victim offender mediation application in domestic violence cases is the fact that there are couples who wish to stay together. While being an aggressor's partner, the battered woman is often also a mother, a lover, a friend, and a member of a family, a religious group, or a tradition; all these facts may have a very contradictory impact on the woman's decision about whether to stay or go.[207]

The restorative justice model, on the other hand, promotes the wishes of the victim, including requests that might seem rather irrational such as a desire to repair the relationship, staying with the batterer is rarely seen as a decision of free choice, an expression of commitment, under-standing of the assistance system limitations, and expression of self-determination or self-confidence.[208]The debate over the consequences of not punishing the abuser in the use of mediation in the field of domestic violence is contentious. Many people believe that mediation diminishes the message that domestic violence is a serious offense. Instead of being punished, the offender escapes without being held accountable. If abusers are allowed to participate in a conciliatory process, it is possible that no negative consequences will result from their actions, and the abuser will be able to avoid responsibility while victims will feel partially blamed.[209]

It is argued that mediation can reduce the crime of domestic violence, allowing the offender to buy the accused's freedom while continuing to harm them. While the other side claims that when the offender admits to committing such a crime during the mediation process, that attitude reduces the victim's

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[205] Wormer, Katherine van. 2014. "Restorative Justice Today: Practical Applications." Contemporary Justice Review, January. https://www.academia.edu/21312997/Restorative_justice_today_practical_applications.

[206] Peterson, Richard R. 2008. "Reducing Intimate Partner Violence: Moving beyond Criminal Justice Interventions." Criminology & Public Policy 7 (4): 537–45. https://doi.org/10.1111/j.1745-9133.2008.00526.x.

[207] Gavrielides, Theo. 2008. "Restorative Justice—the Perplexing Concept: Conceptual Fault-Lines and Power Battles within the Restorative Justice Movement." Criminology & Criminal Justice 8 (2): 165–83. https://doi.org/10.1177/1748895808088993.

[208] Wormer, Katherine van. 2014. "Restorative Justice Today: Practical Applications." Contemporary Justice Review, January. https://www.academia.edu/21312997/Restorative_justice_today_practical_applications.

[209] Pearson, Jessica, Maria Luchesi Ring, and Ann Milne. 2005. "A Portrait of Divorce Mediation Services in the Public and Private Sector*." Family Court Review 21 (1): 1–24. https://doi.org/10.1111/j.174-1617.1983.tb00975.x.

sense of self-blame. Mediation is also very victim-centred, rather than society-centred, because it avoids punishing the offender solely to create societal deterrence.[210]

When the abuser is sharing the same living space with victims, it has a prolonged and continuous detrimental impact on the victim's mind. There is no way out of it for the victim because she does not have a place to develop her strength to fight against the abuser, as home does not remain a friendly and healthy place to gain support and peace. The states of seclusion, fright, anxiety, and depression are similar traits that develop among women who are battered, along with the collateral harms that accompany domestic violence.[211]

It is a tendency observed in these cases that the victim does not initially disclose or complain out of fear of being shamed in society as the litigation process is not confidential and the identity of the other party is also disclosed, which creates a worse situation in the family. Due to the For fear of being exposed to society, the victim does not readily opt for litigation, and the act of violence is intensely concealed within the family. However, the dominance of an abuser must be considered to decide whether the case should be mediated or not, because domestic abuse is the application of force or other methods to intimidate or control an intimate partner. A victim may seem willing to participate in mediation because she believes she has no other option.[212]

Despite the potential benefits of victim offender mediation programs for victims, a small group of victims felt revictimized. When victims are given clear information about the program, what it offers, and what they can expect, they tend to be more satisfied than victims who feel they have been given unrealistic expectations or who find themselves quite unprepared for the meeting with the offender.[213]

If offenders are pressured into participating in these programs, they may not accept full responsibility for their actions, and this can have negative consequences for the victims who find themselves sitting across from an unrepentant offender.[214]

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[210] Brown, Jennifer Gerarda. 2017. "The Use of Mediation to Resolve Criminal Cases: A Procedural Critique." Restorative Justice, November, 197–259. https://doi.org/10.4324/9781351150125-10.

[211] Sitarz, Olga, Dominika Bek, and Anna Jaworska-Wieloch. 2018. "A Creative Commons Attribution-Non-commercial-Share Alike 4.0 International (CC BY-NC-SA 4.0) 356 Mediation and Domestic Violence: Theoretical Reflection on the Polish Background." Criminal Justice Sciences (IJCJS) -Official Journal of the South Asian Society of Criminology and Victimology 13 (2): 110. https://doi.org/10.5281/zenodo.2657631.

[212] Brown, Jennifer Gerarda. 2017. "The Use of Mediation to Resolve Criminal Cases: A Procedural Critique." Restorative Justice, November, 197–259. https://doi.org/10.4324/9781351150125-10.

[213] Legislative History of the National Defense Authorization Act for Fiscal Year 1994 P.L. 103-160.

[214] Umbreit, Mark S. "Mediation of victim offender conflict." J. Disp. Resol. (1988): 85.

However, given the potential benefits of restorative justice programs for victims, it would be a mistake to simply deny victims this service. Victims are satisfied when they feel the offender has accepted responsibility for his or her actions. Conversely, victims are dissatisfied when the offender fails to follow through with his or her promises to pay restitution or when the apology is felt to be insincere. As the above conclusions are based on victims who were offered an opportunity to participate in victim offender mediation programs in domestic violence cases.[215]

A study found that mediation resulted in greater reductions in physical, verbal, and emotional abuse than litigated settlements. Unlike traditional litigation, mediation creates guidelines governing future relations, provides a supportive, empowering environment for women, and enables them to formulate safety devices. In fact, the dominant literature in the field of international mediation asserts that mediation is the preferable format for disputes, especially when there are great differences of power. Although it is discussed throughout the world that matters pertaining to family can be resolved by mediation, it will also help in settling family disputes without further shattering of family bonds. The mediator should realize that the victim is not being suppressed by the offender while engaging in mediation to reach a settlement. The self determination of the victim is very necessary to continue the mediation process voluntarily and not under the pressure of the offender. If the power imbalance still subsists even in the presence of the mediator, then the mediator should stop the process in between and refer it for a trial.[216]

Victims taking part in mediation were only half as likely to fear revictimization as those not doing so, although it is not sure if there was no selection effect, whereby less fearful victims were more likely to participate in mediation. As a result of mediation, victims may feel less angry and fearful, feel personally vindicated, experience a degree of emotional healing, and be happy to witness that the offender has not been let off too lightly. Satisfaction is often higher for those services that concentrate on direct victim-offender meetings, rather than those that carry out mostly indirect mediation. Results are compared with Canadian and U.S. studies.[217]

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[215] Aertsen, Ivo, and Tony Peters. 1998. "Mediation for Reparation: The Victim's Perspective." European Journal of Crime, Criminal Law, and Criminal Justice 6 (2): 106–24. https://doi.org/10.1163/157181798x00139.

[216] Ellis, Desmond Ontario Ministry of the Attorney General Advisory Committee on Mediation in Family Law, and The Ministry of the Attorney General in Ontario (MAG). 1994. Family Mediation Pilot Project: Final Report. Internet Archive. [Oakville, Ont.: Ellis Research Associates]. https://archive.org/details/mag_00006444/page/169/mode/1up.

[217] "Mediation of Criminal Conflict in England: An Assessment of Services in Coventry and Leeds." n.d. Restorative Justice.http://restorativejustice.org/rj-library/mediation-of-criminal-conflict-in-england-an-assessment-of-services-in-coventry-and-leeds/977/#sthash.Rfhlnnke.dpbs.

According to Harris, Bridget, and Amanda George, one benefit of using restorative justice in some domestic violence cases is that it can provide a non-separation option. Many women want to stay with their partners, but they just want the violence to stop. Yet most other domestic violence interventions, whether criminal justice or informal, are strongly oriented toward facilitating or bringing about separation. Thus, it can decrease the separation rate between couples.[218]

Studies have repeatedly shown that people subjected to intimate partner violence opt out of the legal system because they love their partners and want to maintain relationships with them. In a recent study of the Bennington, VT, Integrated Domestic Violence Court, 70% of the couples who came through the system were either still involved in their relationships or planned to continue them.[219]

Mediators share what they have heard during individual talks with the victim and the offender, after which the parties can comment or correct the story. Hearing the story told in this way is believed to help a person experience "recognition", that is, getting to know again and recognizing one's own needs and interests.

One researcher who examined the program at multiple stages (once in the late 1990s and once in 2008) suggested that victim-offender mediation in these domestic violence cases was effective "due to the empowerment of the women victims, but partly, albeit to a smaller percentage, also due to an inner change, to insight, and following from that a change of behavior on the side of the male perpetrators".[220]

The research discovered that women feel empowered and more resourceful, especially in the presence of additional justice resources like victim-offender mediation, and some male perpetrators change their views and attitudes as well (Pelikin, 2010, 67).[221]

After discussing the arguments for and against using victim offender mediation, we will be comparing the application of victim offender mediation in EU countries.

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[218] Harris, Bridget, and Amanda George. "Submission to the Royal Commission into Family Violence." (2015).
[219] Goodmark, Leigh. "Justice as a tertiary prevention strategy." Preventing intimate partner violence: Interdisciplinary perspectives (2017): 185-208.
[220] Pelikan, Christa. "On the efficacy of Victim-Offender-Mediation in cases of partnership violence in Austria, or: Men don't get better, but women get stronger: Is it still true?" European journal on criminal policy and research 16, no. 1 (2010): 49-67.
[221] Pelikan, Christa. "On the efficacy of Victim-Offender-Mediation in cases of partnership violence in Austria, or: Men don't get better, but women get stronger: Is it still true?" European journal on criminal policy and research 16, no. 1 (2010): 49-67.

10. Comparison Of Using Victim Offender Mediation In EU countries.

In the context of combating domestic violence, three approaches can be found for the use of criminal law within the EU. First, general criminal laws apply, and there is no specific legislation.

Protection orders aim to impose a physical distance between the aggressor and the victim, whether there is imminent or long-term danger. There are three types of protection orders: civil restraining orders, imposed by the court; criminal protection orders that can only be enforced during criminal proceedings; and emergency orders, called removal orders, exit orders, or restraining orders, which are used by the police for a very limited period. Protection orders imposed by courts (civil or criminal) generally last for a longer period.[222]

Emergency orders (mostly called restraining orders) are used in all six countries.[223]

They were first implemented in Austria in 1997, the other countries followed much later. Usually, they are limited to a few days, but can be extended to certain days. circumstances (maximum value being 28 days). In Austria, Finland, Denmark, and Greece, the violation of a restraining order is considered a criminal offense. Protection orders imposed by the civil court must ensure long-term protection. They are used in every partner country except Denmark and Finland. Maximum duration varies; the longest period is twelve months.[224]

In Denmark, all protection orders are issued by the police,24-hour hotlines for victims of intimate partner violence operate in all countries, and there are no specific helplines for victims of all forms of violence. Shelters for women are available in each project country and, in each country, at least one shelter is managed by an NGO.[225]

[222] Directive, Environmental Impact Assessment. "Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment." Off. J. Eur. Union L 26 (2011).
[223] Van der Aa, Suzan. "Protection orders in the European member states: Where do we stand and where do we go from here?" European journal on criminal policy and research 18, no. 2 (2012): 183-204.
[224] Canada: Immigration and Refugee Board of Canada, Denmark: State protection available to victims of domestic violence; whether an abusive ex-spouse would have access rights to a minor child, 4 December 2000, DNK35960.E, available at: https://www.refworld.org/docid/3df4be2a18.html.
[225] Greece is mentioned as an exception in Eige, but Greece has a 15900 hotline from the General Secretariat for Gender Equality, a hotline gender-specific support for victims of all forms of violence.

Furthermore, Austria is the only country that offers a combination of psychosocial and legal support for victims of violence; the counselling is for victims of intimate partner violence. In most cases, this is organized by a special type of intervention center or violence protection center. aggressor), psychosocial support in all fields, as well as legal advice and representation in court.[226]

In the 1980s, cases including intimate partner violence were referred for mediation.[227]

In all countries, practical measures of restorative justice can be observed in all steps of the criminal procedure (pre-trial, trial, and post-trial) formal and semi-formal practices.[228]

The public prosecutor has a type of gate guard role. In Greece, for example, the restorative justice is a pre-trial measure with the prosecutor supervising the entire process, as well as the actions of other authorities (police, prisons, and judicial system officials).[229]

The role of the police differs between countries. Although not involved in the beginning or referral of the victim offender mediation in Austria, they play an important role in Finland, referring or initiating most cases. In Denmark, the police are really the agency responsible for the victim offender mediation. In the Netherlands, the public prosecutor works collaborates with the police to inform the victim and the offender about the possibility of mediation.[230]

Depending on the legal provisions in force for the restorative justice and its implementation in the criminal justice system, the result of the Victim offender mediation is mandatory for prosecutors or judges. In Austria and in Greece, the successful completion of the victim offender mediation regularly leads to the waiver of a criminal case sentence.[231]

In the Netherlands and Finland, the outcome may lead to the closure of the case or may be taken into consideration by a judge in his sentence. In these countries, the promoter may consider the agreement

[226] Drost, Lisanne, Birgitt Haller, Veronika Hofinger, Tinka van der Kooij, Katinka Lünnemann, and Annemieke Wolthuis. "Restorative justice in cases of domestic violence". Best practice examples between increasing mutual understanding and awareness of specific protection needs (2015).
[227] The Guidelines for Mediation in Cases Involving Issues of Domestic Violence, promulgated by the Georgia Commission on Dispute Resolution, are hereby repealed, effective January 1, 2021.
[228] Soares, Luiz Eduardo. "The national public security policy: background, dilemmas and perspectives". Estudos avançados 21 (2007): 77-97.
[229] Taleb, Akila, and Thomas Ahlstrand. "The public prosecutor, its role, duties and powers in the pre-trial stage of the criminal justice process–a comparative study of the French and the Swedish legal systems–." Revue Internationale de droit penal 82, no. 3 (2011): 523-540.
[230] Devroe, Elke, Adam Edwards, and Paul Ponsaers, eds. Policing European Metropolises: The politics of security in city-regions. Taylor & Francis, 2017.
[231] Zarafonitou, Christina. "Criminal victimisation in Greece and the fear of crime: A 'paradox'for interpretation." International Review of Victimology 16, no. 3 (2009): 277-300.

made in the victim offender mediation when deciding to waive the charges. On the other hand, in Denmark, it is conceptualized as an additional measure, which means that victim offender mediation is not an alternative to punishment. However, a judge may consider this when imposing a sentence.[232]

When the Greek law on criminal mediation was introduced in 2006, the only organization that dealt with IPV cases and at the same time had a psychotherapy counselling program for couples and individuals was the National Center for Social Solidarity (EKKA) to which the criminal mediation procedure was finally designated. and assistance to individuals, families, groups, and populations in crisis situations or in need of emergency social aid. After a period described as "Let the Thousand Flowers Bloom", the development phase of restorative Justice in Finland, the new Mediation Law came into force in 2006 aimed at expanding and the national funding of the services, as well as the promotion of further uniformity and legal protection for the parties involved.[233]

Until then, mediation has been organized by civil society organizations and NGOs or municipalities with minimal state oversight and guidance. Currently, the agency's Regional Administrations of the State of Finland are responsible for organizing mediation services and ensuring that they are adequately accessible throughout the country. The services are mainly provided based on commission contracts, which are made with the municipalities or with other public or private service providers. Interestingly, criminal mediation in Finland is provided under the auspices of the Ministry Of Social Affairs And Health,16% of all cases treated are cases of domestic violence.[234]

In the Netherlands, mediations and conferences are carried out by different organizations (Victim in Focus, Prosecutor's Office Maastricht, courts, police, probation, Eigen Kracht Centrale) financed by the Ministry of Security and Justice. There is some experience with the MVO in cases of domestic violence. Organizations such as "Victim in Focus "and other people involved in these pilots are currently looking for effective and appropriate ways to handle IPV cases with respect to the needs of victims and other parties involved.[235]

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[232] Aertsen, I., & Willemsens, J. (2001). The European forum for victim–offender mediation and restorative justice. European Journal on Criminal Policy and Research, 9(3), 291-300.

[233] Irvine, Charlie. "Kluwer Mediation Blog."

[234] Uotila, E., & Sambou, S. (2010). Victim–Offender Mediation in Cases of Intimate Relationship Violence—Ideals, Attitudes, and Practices in Finland. Journal of Scandinavian Studies in Criminology and Crime Prevention, 11(2), 189-207.

[235] Hokwerda, Ytje Minke, and Ido Weijers. "Victim-Offender Mediation and conferencing with juvenile offenders in the Netherlands." In Victim-Offender Mediation with Youth Offenders in Europe, pp. 275-298. Springer, Dordrecht, 2005.

In Denmark, the national police are responsible for mediation. The victim offender mediation secretariat is located within the National Prevention Center at the national police. At the local level, a coordinator is appointed in each of the 12 police districts. They are responsible for the local implementation of the victim offender mediation and contact with the mediators. The role of the coordinator varies in these 12 districts. There is a general reluctance to use mediation in cases of intimate partner violence, but this is done in some police districts.[236]

In Austria, Finland, and Greece, the mediation process begins after the parties have been invited if they agree to participate with a preparatory meeting of the mediator(s) and both parties, prior to entering the actual mediation sessions.[237]

These pre-meetings are essential to assess eligibility and power relationships, as discussed above. In Denmark, the possibility of paid preparatory meetings was introduced in July 2014, although it is not mandatory. In the Netherlands there are different projects and pilots, so the beginning may differ a little from case to case. When victim offender mediation is decided to be appropriate, mediation is mostly straightforward, meaning a face-to-face meeting between the victim and the offender with the assistance of the mediator(s).[238]

But mediation can also be carried out indirectly, including anything other than a face-to-face meeting between the victim and the offender. conflicting or easier to organize mediation In Austria and the Netherlands, indirect victim offender mediation is possible, mainly used at the victim's request. For example, in the Netherlands, victim offender mediation will result in a letter. The Austrian mediation service Neustart has developed a special methodology for partner violence cases covering two specific settings.[239]

Both methods begin with separate individual interviews with the former partners involved to assess the suitability of the case and prepare for the mediation session.
The first method, entitled "working in teams of two," involves two mediators who are present throughout the process and during individual conversations.

[236] Friesland Real Justice, Drenthe Real Justice, Zwolle Real Justice, The Hague Real Justice, Utrecht RJ and Tilburg RJ.
[237] Tsiftsi, Evangelia. "Η Διαμεσολάβηση στις Διοικητικές Διαφορές (Mediation in Administrative Disputes). Available at SSRN 4158576 (2022).
[238] "Mediation." n.d. Www.rechtspraak.nl.https://www.rechtspraak.nl/English/Pages/mediation.aspx.
[239] Bouffard, J., Cooper, M., & Bergseth, K. (2017). The effectiveness of various restorative justice interventions on recidivism outcomes among juvenile offenders. Youth violence and juvenile justice, 15(4), 465-480.

If this method is not applied, the mediation session will not be held immediately after individual conversations.

In the second method, called "Gemischtes Doppel", meetings are separated with the victim and the aggressor, usually taking place at the same time, but in different rooms. Immediately after these meetings, both former partners and the two mediators gather for the mediation session.
The element central to the "diplomats" is the "mirror of the stories' (Geschichtenspiegel): the mediators say another version of what they heard during previous one-on-one conversations, that is, mirror their partners' stories.[240]

In Greece, the prosecutor must investigate the likelihood of implementing criminal mediation, after having spoken with the victim and the aggressor, and then sends a referral to E.KKA in Athens (for couples) and Thessaloniki (for male offenders who used violence against women).
In Greece, according to the law, a successful mediation presupposes that the aggressor gives his 'word of honour' to never commit any crime of domestic violence future.
If any of the conditions is violated for a period of three years, the case will be returned to the criminal case and continues in the stage before the mediation (as if the mediation had never happened). The Prosecutor's Order is then sent to EKKA, and their social psychologists must meet at least once with the couple (in the Athens program) or the abuser (in the Thessaloniki program). as it proves your consent to begin the mediation process. For each person or couple, three to five sessions are held, every 15 days. For three years, the prosecution, or the trial, if it has already started, is suspended.[241]

In Austria, Denmark, and Finland, it is possible for victims and abusers to bring a support person to mediation meetings. Often, both need to agree to this in advance, although in Austria, the offender's consent is not required. Austria and Finland specify these supporters as friends and family members or a lawyer, or representatives of women's associations or NGOs. In England and Wales, it depends on the individual case.[242]

[240] Jonas-van Dijk, Jiska, Sven Zebel, Jacques Claessen, and HanNelen. "Victim–offender mediation and reduced reoffending: Gauging the self-selection bias". Crime & Delinquency 66, no. 6-7 (2020): 949-972.
[241] (Victim-Offender) Penal Mediation [Ποινική Διαμεσολάβηση]." n.d. European Institute for Gender Equality.https://eige.europa.eu/gender-based-violence/methods-and-tools/greece/victim-offender-penal-mediation-poiniki-diamesolavisi.
[242] Flinck, Aune, and Juhani Iivari. "Lähisuhdeväkivalta sovittelussa: tutkimus-ja kehittämishankkeen realistinen arviointi". (2004).

However, the possibility of bringing a support person (family or professional) is often offered to victims. In the Netherlands, it also depends on the individual case but is usually an accepted request does not allow supporters into mediation meetings. The results of mediation are of a personal nature for the victims and offenders but are also closely related to the criminal prosecution of the particular case that mainly states how the offender should behave in the future.[243]

In Finland, guidelines for the abuser's future behavior are agreed upon, especially in VPI cases where the partners want to continue living together. In addition, the agreements may address economic compensation.[244]

In Austria, Finland, and the Netherlands, the agreement must be written and signed. In Denmark, it may be an oral or written agreement or simply a notification that the meeting took place.[245]

The protection and safety of victims of intimate partner violence is a priority in all the countries discussed here. Mediation can only take place with the consent of the victim, who is informed in advance of all available options. During Victim offender mediation, the needs and wishes of the victim should always be considered. However, regarding concrete safety measures applied in practice, we have found that clear standards are lacking in some countries. Greece, for example, observes specific problems with the lack of protection of victims during victim offender mediation. It can sometimes take a long time several months - before mediation meetings begin after being ordered by the promoter of victim offender mediation.[246]

Another problem that can occur is that mediation may just be a strategy by the offender to get closer to the victim who avoided contact with it, thus causing re-victimization. In theory, victims may deny participation in mediation.[247]

In practice, victims sometimes agree to participate in mediation because they need to organize other practical matters with the offender, such as financial issues or child custody.[248]

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[243] Claessen J. (2017). Forgiveness in criminal law through incorporating restorative mediation. Nijmegen, The Netherlands: Wolf Legal Publishers.
[244] Uotila, Erika, and Saija Sambou. "Victim–Offender Mediation in Cases of Intimate Relationship Violence—Ideals, Attitudes, and Practices in Finland." Journal of Scandinavian Studies in Criminology and Crime Prevention 11, no. 2 (2010): 189-207.
[245] Järvinen, Saija. "Rikosten sovittelu Suomessa." Oikeuspoliittisen tutkimuslaitoksen julkaisuja 116 (1993): 1993.
[246] Obessi Ph, L. L. B. "Legal Protection against Domestic Violence in Greece." International Journal of Caring Sciences 1, no. 1: 7-14.
[247] Zellerer, Evelyn. "Restorative justice in indigenous communities: Critical issues in confronting violence against women." International Review of Victimology 6, no. 4 (1999): 345-358.

Most countries (Austria, Greece, England and Wales, Finland, and the Netherlands) focus on the preparation phase to protect the victim's safety, for example with a full admission procedure and preparatory meetings.[249]

In Greece, the safety of victims is protected simply by not referring serious cases to mediation. Police) are not intended for mediation, although sometimes the story of "hidden" violence can surface during the victim offender mediation. Where parties want to discuss their situation seriously and honestly.[250]

Only in Austria, mediators can use a risk assessment tool to assess the eligibility of a specific case for victim offender mediation. Assistance and involvement of a victim support agency may also safeguard the victim's rights during the mediation process.[251]

In all countries, except Greece, there is no mandatory observation period after the mediation has been successfully completed. Only Greece has a three-year period in which the trial is interrupted, depending on the fulfillment of the mediation and its agreement of results, i.e., the conclusion of the counselling program. In other countries, such as Austria and Finland, an observation period, or follow-up of outcome agreements is possible but not mandatory. It depends on the organization dealing with the case.[252]

The outcome will be reported to the prosecutor, who may take this into account during the sentencing. In Denmark and the Netherlands, there is no observation period, and agreements are also not officially supervised.[253]

We can conclude that in these countries, there are legal and social measures to combat intimate partner violence, and mediation between victims and criminals also plays a role in this area.

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[248] Johnson, M.P. (2006). Apples and Oranges in Child Custody Disputes: Intimate Terrorism vs. Situational Couple Violence. Journal of Child Custody, Vol.2 (4): 65-67.

[249] Uotila, E., Sambou, S. (2010). Victim-Offender-Mediation in Cases of Intimate Relationship Violence. Ideals, Attitudes and Practices in Finland. Journal of Scandinavian Studies in Criminology and Crime Prevention Volume: 11 Issue 2: 189-207.

[250] Vanfraechem, Inge, and Ivo Aertsen. Restorative justice realities: empirical research in a European context. Eleven International Pub., 2010.

[251] Pelikan, Christa. "On the efficacy of Victim-Offender-Mediation in cases of partnership violence in Austria, or: Men don't get better, but women get stronger: Is it still true?" European journal on criminal policy and research 16, no. 1 (2010): 49-67.

[252] Pelikan, C. (2000, April). Victim offender mediation in domestic violence cases–A research report. In United Nations Crime Congress: Ancillary Meeting, Vienna, Austria: http://www. restorative justice. org/rj3/UNBasicPrinciples/AncillaryMeetings/Papers/RJ_UN_CPelikan. htm.

[253] Lünnemann, Katinka, and Annemieke Wolthuis. "Restorative justice in cases of domestic violence." Victim Offender Mediation: Needs of victims and offenders of Intimate Partner Violence 2nd Comparative report, Interviews & Focus Groups. Preuzeto s: https://iars. org. uk/sites/default/files/Comparative% 20report% 20II% 20final. pdf (6.6. 2018) (2015).

Practices and regulations among countries differ. Country reports show that, in most legal systems, the main access to MVO is via public prosecutors or the police.[254]

Some national restorative justice legislations explicitly mention strict eligibility criteria in cases of intimate partner violence, such as in Greece, where only offenses must be referred to the victim offender mediation. In Austria, there are no special legal provisions for intimate partner violence cases. In each country, cases of intimate partner violence are considered, "special cases" within victim-offender mediation. Only Austria has developed a distinct methodology for partner violence with two main elements: the involvement of two mediators of the opposite sex (a man and a woman) and the use of the "mirror of stories": by opening the session, the mediators tell what was told by the victim and the offender; therefore, they both hear their stories from a third person. In Finland, preferably, a team of male male-female works in cases of intimate partner violence.[255]

In all EU countries, the protection and safety of the victim in the restorative justice process is subject to debate or concern. Currently, only Austria has a risk assessment tool for victim offender mediation in cases of intimate partner violence. Most other countries seem to focus on the stage of preparation to ensure victim safety, for example, having preparatory meetings to decide whether victim offender mediation is appropriate. In most countries, the outcome of mediation is some sort of agreement reached by the parties. Once the mediation is successfully completed, there will be no mandatory observation period afterwards. Only Greece has a period of three years in which the trial is interrupted, depending on the fulfillment of the mediation and the results of the agreements.[256]

The Portuguese legislator chose not to admit "adult criminal mediation" in the context of domestic violence between spouses, ex-spouses or between the agent and the person with whom they maintain or have maintained a relationship like that of the spouses.In these cases, criminal mediation as a procedural diversion mechanism came to recognize the possibility of a "restorative meeting" between

[254] Strang, Heather, and John Braithwaite, eds. Restorative justice and family violence. Cambridge University Press, 2002.
[255] Drost, L., Haller, B., Hofinger, V., Van der Kooij, T., Lühnemann, K.D., Wolthuis, A. (2015). Restorative Justice in cases of domestic violence, Best practice examples between increasing mutual understanding and awareness of specific protection needs. WS1 Comparative report 2015 (JUST/2013/JPEN/AG/4587).
[256] Lünnemann, Katinka, and Annemieke Wolthuis. "Restorative justice in cases of domestic violence." Victim Offender Mediation: Needs of victims and offenders of Intimate Partner Violence 2nd Comparative report, Interviews & Focus Groups. Preuzeto s: https://iars. org. uk/sites/default/files/Comparative% 20report% 20II% 20final. pdf (6.6. 2018) (2015).

the perpetrator of the crime of domestic violence and his victim, which verified the will of both parties after the provisional suspension of the process or the conviction.[257]

Law no. 21/2007, of June 12, which introduced criminal mediation for adults in Portugal, excluded crimes of domestic violence from its material scope. This exclusion stems from the fact that the possibility of criminal mediation was restricted to particular crimes in the broad sense[258],perhaps with greater accuracy, to some particular crimes in the broad sense.
However, the new legal regime applicable to the prevention of domestic violence, and the protection and assistance of its victims, contained in Law No. "restorative meeting", which supposes "a meeting between the perpetrator of the crime and the victim", as well as “the presence of an accredited criminal mediator."[259]

However, Law No. 112/2009, of September 16, in its original version, provided in its Article 39 for the victim's right to participate in a restorative meeting with the accused, during the provisional suspension of the process or during the fulfilment of the penalty, provided that the respective cumulative requirements were met: the victim's express consent; the express consent of the accused; the restorative encounter serves the legitimate interests of the victim; security conditions are guaranteed; and, finally, the presence of a criminal mediator is ensured.

In the current Portuguese legal system, criminal mediation is not accepted as diversion procedural for domestic violence.[260]

Besides, it was prescribed, in article 39 Law No 112/2009, 16 September, that "during the provisional suspension of the process or during the execution of the sentence, a meeting between the perpetrator and the victim may be promoted, under the terms to be regulated, with the express consent of both, with a view to restoring peace. social welfare, considering the legitimate interests of the victim, ensuring that the necessary security conditions are in place and the presence of a criminal mediator accredited for the purpose".However, this article was repealed by Law No. 129/2015, of 3 September.

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[257] Mestitz, Anna, and Simona Ghetti. "Victim-offender mediation with youth offenders in Europe." An Overview and Comparison of 15 (2005).
[258] Pursuant to article 2, no. 2, of the Law, “mediation in criminal proceedings can only take place in a criminal proceeding whose procedure depends on a complaint or private accusation”.
[259] The conclusion that the penal mediation of adults is only allowed, among us, in relation to *some* crimes in a broad sense, results, without room for doubt, from the aforementioned Law.
[260] A study that continues to be a reference in the treatment of the mechanisms of criminal procedural diversion is that of José de Faria Costa, «Diversion and mediation: what paths? », Reprint of vol. BFD LXI, 1985.

That rule, no matter how important it may be, is thought to have some advantages that should be emphasized. Firstly, it contradicts the idea that the restorative encounter between the victim of the crime of domestic violence and its agent is necessarily devalued to the former. Thus, the image of the helpless victim, terrified and incapable of taking their own destiny into their own hands, which repeatedly appeared as an obstacle to criminal mediation in domestic violence, is abandoned. The legislator, when coining this rule, assumes that there are victims of domestic violence who want to meet with their aggressor because they think this is a good solution for them. And it also necessarily admits that this may in fact be a good solution for them.[261]

On the other hand, this rule has the symbolic value of opening the door, at other times in the criminal process, to restorative solutions. From now on, there is no longer only criminal mediation conceived as a mechanism for procedural diversion and triggered in the investigation phase.

However, as this encounter also has its origin in a conflict that is a crime, the concept of "Penal mediation" is not necessarily considered useless just because the encounter is after the solution given by criminal justice. In comparative law, the projects of the so-called "post-sentence criminal mediation" are, moreover, recurrent.

Second, objections of a more substantial nature can be raised against the rule. As an example, it can be said that the election, as the aim that presides over this meeting, is not understood to be the restoration of social peace.

On the one hand, restorative practices, as they are based on the existence of an interpersonal dimension of crime, aim to pacify this concrete relationship between the agent and the victim and not - at least in the first line - that social peace.

On the other hand, if what prevails in domestic violence is the interest of the victim and not punishment in the name of defending the community, the purposes must relate primarily to that interest in their "individual and/or family" peace. Looking at this possibility of a restorative meeting so recently foreseen in the context of the legal regime applicable to the prevention of domestic violence and the protection and assistance of its victims, several questions remain.

[261] Santos, C.C., 2010. Violência doméstica e mediação penal: uma convivência possível. Revista Julgar, Coimbra: Coimbra Editora, (12), pp.67-79.

The question is why this possibility of meeting between the victim of domestic violence and his aggressor is only referred to at a later time.

We disagree with that since the restorative justice process in that case is not considered an independent alternative to criminal justice, as it is only allowed when criminal justice allows it to happen, which can lessen its effectiveness and ability to solve the problem. However, we agree that it can be a complete alternative in some domestic violence cases before going to criminal courts.

There is no other strong justification for this option other than the fear of transmitting an image of political-criminal tolerance in the face of domestic violence. For this not to be the case, it is established as a rule that there must be a decision by criminal justice, and only then is that restorative meeting accepted. Without thinking that, depending on the specifics of the case, that criminal solution can harm the restorative meeting.

And, above all, without recognizing that intolerance towards domestic violence does not stem mainly from the symbols that justice resorts to, but rather from the effectiveness of the pacification of the conflict in the forms desired by its holders.[262]

We can conclude that the practice and regulations in the countries (and partially even within the countries) differ, and that the countries can arrest each other and at this moment draw attention to the other Member States that still do not use restorative justice as a means of conflict resolution in cases of domestic violence against women.

Specifically, Portugal, which was the first member state to ratify the Istanbul Convention, is lagging behind this whole restorative justice movement in the face of domestic violence, mainly because it decided to repeal Article 39 of the law112/2009, of September 16, which establishes the legal regime applicable to the prevention of domestic violence, protection, and assistance of victims at a restorative meeting.

[262] Santos, Cláudia Cruz. "Violência doméstica e mediação penal: uma convivência possível." Revista Julgar, Coimbra: Coimbra Editora 12 (2010): 67-79.

CONCLUSION

According to the study that has been done above, we can conclude that what is missing in applying the EU Victims Directive to be more effective in the EU is the training of mediators in domestic violence cases, as some countries are lacking the protection of the victim. For example, as mentioned above, at the current time, only Austria has a risk assessment tool for victim offender mediation in cases of intimate partner violence.

We agree that an observation period, such as in Austria or Finland, or follow-up of outcome agreements must be done after victim offender mediation, at least to check the results of the process.

In addition, we believe that victim offender mediation needs to be optional, as at the same time it protects the weaker party in the relationship, which is mostly the victim. In addition, there should be more specific rules that help the victim guarantee his rights in that mediation process.

Also, better enhancement of victim offender mediation needs to be done and spread among people so they can refer to the process, as it's even better to try to refer to victim offender mediation or restorative justice practices before going to penal or criminal procedures as the relationship can be stored, in addition to the observation period mentioned above to be able to guarantee the victims' rights.

As we also encourage the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL[263]on combating violence against women and domestic violence
where it empowers the victims of crime, improving support and protection of the most vulnerable victims, strengthening cooperation and coordination among all relevant actors, and strengthening the international dimension of victims' rights where it mentions that one of the key actions for the European Union.

The communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions mentions that:

[263] Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on combating violence against women and domestic violence COM/2022/105 final Available at : EUR-Lex - 52022PC0105 - EN - EUR-Lex (europa.eu).

"It is therefore crucial that Member States ensure high quality standards in delivering restorative justice services and provide for training of restorative justice practitioners. The potential benefits of such services depend on the availability, accessibility, and quality of restorative justice services in the Member States."[264]

As it mentions that the commission will also focus on training activities that effectively reach actors who are in contact with victims, such as judicial authorities and other judicial staff in contact with victims such as lawyers, prosecutors, court staff, prison, and probation staff. In this regard, the Commission will strengthen its cooperation with the European Judicial Training Network (EJTN). The Commission will also promote a better understanding of victims' rights and improved methods of communication with victims among law enforcement authorities with the assistance of the European Union Agency for Restorative Justice Services, providing victims with a safe environment to make their voices heard and support their healing process.

The Victims' Rights Directive requires that such services have as a primary consideration the interests and needs of the victim.[265]

In addition, the proposal mentions that according to the VOCIARE report by" Victim Support Europe", there is a lack of knowledge about restorative justice services among professionals and victims.[266]
Increasing knowledge of the process can decrease the under-reporting problem that exists and encourage victims to report their accidents. As well as the training of the practitioners, this is still a challenge because domestic violence victims might have specific physiological needs that differ from victims of other crimes.

As we can conclude, better protection can be provided to the victim as better application of victim offender mediation and of the restorative justice process. In fact, restorative justice could be applied if the gaps that are related to the victims' rights in the EU Victims Directive are filled; restorative justice could be a better alternative/complement to the criminal procedures. It is the time to better understands the criminal intervention as a place where the interests of the victim play a central role.

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[264] COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Towards an integrated approach to cultural heritage for Europe Available at: https://ec.europa.eu/assets/eac/culture/library/publications/2014-heritage-communication_en.pdf.
[265] See Article 12 and recital 46 of the Victims' Rights Directive.
[266] VOCIARE report by Victim Support Europe.

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