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CONFERENCE OF THE MINISTERS OF JUSTICE OF THE COUNCIL OF EUROPE

“Crime and Criminal Justice: The Role of Restorative Justice in Europe”

Conference organised under the Italian Chairmanship
of the Committee of Ministers of the Council of Europe
(Venice, 13 and 14 December 2021)

The Conference of Ministers of Justice of the Council of Europe, organized by Italy and with the theme “Crime and Criminal Justice: The role of Restorative Justice in Europe”, wants to build on the Council of Europe’s Recommendation CM/Rec (2018)8 on restorative justice in criminal matters.

The aim of the Conference of Venice is to promote the progress of the debate on restorative justice in criminal matters within the Council of Europe, based on the analysis made by European and international sources and taking note of the best practical experiences in the Member States.

The Italian Chairmanship of the Committee of Ministers of the Council of Europe would like to encourage a round table discussion regarding the current use of restorative justice by the different criminal law jurisdictions in Europe and the obstacles in making restorative justice accessible and available at every stage of the criminal proceeding. The Italian Chairmanship also would like to present for adoption a “**Venice Declaration on the role of restorative justice in criminal matters**” in order to promote the practise of restorative justice and further implement its uniform application by the Council of Europe Member States, aiming at a widespread implementation of Recommendation CM/Rec (2018)8 .

In order to prepare the Conference of Venice, a Senior Officials Meeting (SOM) was held in Como on 12 and 13 October 2021.

During the SOM, experts from 29 member states of the Council of Europe emphasised the relevance to promote the Committee of Ministers **Recommendation CM/Rec (2018)8 on restorative justice**

in criminal matters, which recognizes the potential benefits of resorting to restorative justice as a process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party.

In Como, some experts pointed out that there is ample empirical evidence that restorative justice works and produces satisfactory results. Speakers also focused on the possible positive impact of restorative justice paths on the radicalization of second-generation immigrants. Furthermore, it has been affirmed that restorative justice allows governments to save resources by decreasing the celebration of trials, and positively affects the reduction of recidivism and re-offending. At this regard, experts suggested the Council of Europe to undertake concrete actions, such as carrying out a comprehensive study on the models of restorative justice currently contemplated in national legislations and implemented by governments, in order to facilitate exchange of best practices and experiences among member states.

Other experts underlined that restorative justice should not be limited to mediation because it is not a simple tool but a broader culture that should permeate the criminal justice system based on the participation of the victim and the offender, as well as other affected parties and the wider community in addressing and repairing the harm caused by crime. Therefore, they suggest the idea that a right of access to services of restorative justice for parties involved in a trial should be provided by Governments. In this context, many Senior Officials supported the idea that the *Venice Declaration* could contain an invitation to member states to arrange national action plans for the implementation of the Recommendation CM/Rec (2018)8 on restorative justice in criminal matters.

Both Senior Officials and experts stressed the relevance to coordinate efforts, at national and multilateral level, in order to put into practice projects aiming at a widespread communication of the role and benefits of restorative justice in criminal matters.

In Como, other European (CE and UE) and international (UN) sources, which acknowledge an important role to restorative justice in the field of criminal justice, victims' assistance and protection, offenders' rehabilitation, and education for justice, were also debated. Those sources are:

- ❖ Council of Europe Recommendation CM/Rec(2008)11 on European Rules for juvenile offenders subject to sanctions or measures which recommends the use of mediation or other restorative measures at any stage of dealing with juveniles;
- ❖ Council of Europe Recommendation Rec(2006)2-rev on European Prison Rules, establishing the possibility for prisoners who consent to do so to be involved in restorative justice programmes;
- ❖ Council of Europe Recommendation CM/Rec(2010)1 on Council of Europe Probation Rules;
- ❖ DIRECTIVE 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Framework Decision 2001/220/JHA;
- ❖ EU strategy on victims' rights (2020-2025) which includes the promotion of restorative justice services among the "key actions" for the European Commission;
- ❖ Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, adopted by the UN in 2002 (ECOSOC Res. 12/2002);

- ❖ The 2021 UN Kyoto Declaration “on Advancing Crime Prevention, Criminal Justice and the Rule of Law: Towards the Achievement of the 2030 Agenda for Sustainable Development (XIV United Nations Congress on Crime Prevention and Criminal Justice)” recommending the promotion of restorative justice for victim support, reintegration of the offender and crime prevention and recidivism;
- ❖ The 2015 UN Doha Declaration “on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation (XIII United Nations Congress on Crime Prevention and Criminal Justice)”, encouraging the adoption of restorative justice, also included in education programmes for justice (Education4Justice).
- ❖ Reference was also made to the High-Level Roundtable (23 March 2020), organised by the Georgian Presidency of the Committee of Ministers of the Council of Europe to explore child-friendly justice, with a focus on fostering child participation and restorative justice.

Building upon what emerged in the SOM of Como, the following main themes will be discussed during the Conference in Venice:

1/ Towards the widespread application of restorative justice in juvenile criminal matters

This session will be dedicated to promoting the widest possible application of restorative justice for juveniles in conflict with the law and juvenile victims of crime, as the most suitable instrument to promote a child-friendly justice according to the Guidelines of the Committee of Ministers on Child-Friendly Justice (2010). The aim is also to encourage self-reflective practices with juveniles aiming at educational purposes according to Committee of Ministers Recommendation Rec(2008) 11 on the European Rules for juvenile offenders subject to sanctions or measures. In general, this session will also discuss how to adapt restorative justice to children and adolescents who may be either offenders or victims of crime, by taking into consideration their age, psychological development and social factors, in order to adapt the criminal proceeding and educational and social responses to each individual case. The best interest of the child and adolescent, educative and family aspects to be taken into account in the restorative justice processes as well as the need for additional training curricula of the professionals involved in dealing with children will also be discussed.

Ministers are invited to consider whether, three years after the Recommendation CM/Rec (2018)8, the time has come to address an analysis of the extent and degree to which the judicial and criminal justice systems of all member states have promoted restorative justice for children and adolescents, have adopted appropriate legal provisions at this regard in the juvenile field, have harmonized their legislation and daily practices in compliance with the principles laid down in the above-mentioned Recommendation.

The over-all aim of this session is to encourage the member States to pay special attention to children and adolescents in conflict with the law and/or victims of crime and ensure that their rights are safeguarded and their needs are met.

2/ Towards a widespread use of restorative justice as a complement of the criminal justice system to underpin its reform aiming at desistance from crime, victims' recovery, and offenders' redress and reintegration

Ministers will discuss the benefits of 'using restorative justice with respect to criminal justice systems' and its relevance 'as a flexible, responsive, participatory and problem-solving process' in responding to crime, as stated in Recommendation CM/Rec(2018)8. Ministers will be invited to discuss how to encourage the widest possible implementation of restorative justice, its principles and methods as an alternative to, or as a complement of, criminal proceedings aiming at desistance from crime, victims' recovery, and offenders' reintegration in the context of wider criminal justice reform in each Member State. In the frame of Recommendation CM/Rec(2018)8, the debate will also address the potential of restorative justice in responding to crime in front of 'the possible harm which may be caused to individuals and societies by over-criminalisation and the overuse of punitive criminal sanctions'.

Ministers are kindly invited to consider the role of judicial authorities in supervising and validating the outcome of restorative processes as well as of the lawyers, encouraging both to act as a catalysts and a liaison between restorative justice and criminal proceedings. Ministers are also asked to exchange views on the role of police, prison and probation services in encouraging and supporting restorative justice, and to debate on how and which context an organic discipline for restorative justice is to be provided (criminal code, code of criminal procedure, specific legislation) in order to assure that restorative justice complements traditional criminal proceedings, or be used as an alternative to them. They are finally requested to discuss whether and how to establish public or private restorative justice centres and how to regulate them.

3/ Towards a widespread training in restorative justice as a key to implement Recommendation CM/Rec(2018)8

Ministers will be invited to discuss the key role of appropriate training in implementing restorative justice. A common understanding has been reached on the assumption that restorative justice demands having sufficient in numbers and well-trained-for-the-purpose mediators, who work, based on high professional and ethical standards, in order to guarantee impartiality, equal and just treatment of all participants in the process and prevent secondary and repeat victimisation, intimidation and retaliation. The discussion will address further aspects: how restorative justice should be an integral part of the training curricula of legal professionals, social workers, the police, as well as of prison and probation staff.

Ministers will be invited to reflect on how to include the principles, methods, practices and safeguards of restorative justice in university curricula and other tertiary level education programs for jurists, especially in the undergraduate and postgraduate programs, and in the ongoing training, in particular of judges and lawyers. How to include principles, methods, practices and safeguards of restorative justice in the education and training of social workers starting from undergraduate and postgraduate programs, as well as in ongoing training, in particular for practitioners in the justice sector will also be addressed.

Ministers will share whether and how such training is provided in their jurisdiction.