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**Impact of the 2012 EU Victims Directive
and the Future of Restorative Justice**

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Impact of the 2012 EU Victims Directive and the Future of Restorative Justice

Daria Pietropaolo¹

“Make men work together, show them that beyond their differences and geographical boundaries there lies a common interest.” – Jean Monnet

I. Introduction

The non-binding nature of European and international victims’ rights instruments have weakened the ability of supranational bodies, such as the European Union (EU), to implement victim rights policies.² Before the EU’s Framework Decision on the standing of victims in criminal proceedings in 2001, there were no provisions referring to the victim’s rights structure of restorative justice.³ Since then, the European Union has seen growth in the awareness and integration of restorative justice, especially in the 2012 EU Victims Directive.⁴ However, restorative justice is often incompletely actualized due to a lack of capacity or desire from EU member states to ensure that victims and offenders have equal access to restorative justice.⁵ An exploration on the development of restorative justice in the EU will reveal the strengths and weaknesses of the EU’s relationship with its constituent states in this area.

II. History of Restorative Justice in the EU

The development of transnational restorative victims’ rights work mirrored the European community’s familiarity with restorative justice and the limits of the EU’s ability to impose on national sovereignty. From 1999-2007, the Council of Europe adopted recommendations and commentaries which promoted mediation and other restorative-based programs to be integrated into criminal justice agencies. In response to the Council of Europe, the European Commission

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² Lauwaert, Katrien. "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*, vol. 1, no. 3, 2013, 414.

³ Ibid. Restorative Justice is a process whereby the victim and the offender may voluntarily participate in the resolution of matters arising from the criminal offence through the help of an impartial third party. See more at: DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, Art. 2d.

⁴ Known as Directive 2012/29/EU. An EU directive is a legislative act to which member states must adhere by incorporating the directive’s objective into national law. National authorities must then communicate these measures to the European Commission within the time frame stated in order to avoid infringement proceedings. See more at: “Types of EU Law.” *European Commission - European Commission*, 12 July 2019; Regulations, Directives and Other Acts.” *European Union*, 7 Mar. 2019; McCormick, John. *European Union Politics*, 89; DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL.

⁵ Marder, Ian D. “Restorative Justice and the Council of Europe: An Opportunity for Progress.” *Penal Reform International*, 4 July 2018.

for the Efficiency of Justice (CEPEJ) noted in 2007 that there still remained a lack of awareness, availability, and training in the programming of restorative justice, thus making it difficult for the original 1999 Recommendation to be implemented completely and effectively.⁶ This inability to dictate implementation is partially due to the difference in sovereignty. The EU is characterized by regional integration, which affords members a dual-sovereignty: one that is state-centered and one that comprises a collective personality. Criminal justice systems belong to the statehood sovereignty of a member and are thus not dictated by the EU. However, the EU does reinforce the criminal justice systems by its advocacy for the protection of human rights.

III. The 2012 EU Victims Directive and Restorative Justice Potential

Due to various actions from victim's rights advocates in Europe,⁷ the European Commission decided it was necessary to take action by proposing a Directive in 2012. This Directive of the European Parliament and the Council established core standards on the "rights, support, and protection of victims of crime in Europe"⁸ by outlining restorative justice services,⁹ training, and capacity guidelines.¹⁰ This Directive has affected legislative and policy reforms among EU member states to improve the statutory rights and services for victims of crime. This is a progressive step for member states in the field of criminal justice, but the 2012 Directive does have its limitations. While there is established quality of restorative justice services, there is no equal access protection. Additionally, the scope of restorative justice for the EU as it pertains to its member states is restricted to the criminal procedure of each member state.¹¹ This highlights the tension between promoting a collective personality which values justice and the implementation of such priorities on a state-by-state basis, as criminal justice systems are within the domestic sovereign realm of each member state.

Along with various scholars of restorative justice, the Council of Europe has revealed in its 2018 restorative justice recommendation that in Europe, many victims and offenders are not

⁶ Marder, Ian D. "Restorative Justice and the Council of Europe: An Opportunity for Progress." *Penal Reform International*, 4 July 2018.

⁷ Including Stockholm Programme (2009), the Budapest roadmap (2011), and even the Lisbon Treaty provided legal grounds to strongly advocate for victims' rights. See more at: Lauwaert, Katrien. "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*, vol. 1, no. 3, 2013, 415-6.

⁸ Marder, Ian D. "Restorative Justice and the Council of Europe: An Opportunity for Progress." *Penal Reform International*, 4 July 2018.

⁹ "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 victimisation, intimidation and retaliation. Such services should therefore have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm." See more at: DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, (46).

¹⁰ "Equally, training should be promoted for lawyers, prosecutors and judges and for practitioners who provide victim support or restorative justice services. This requirement should include training on the specific support services to which victims should be referred or specialist training where their work focuses on victims with specific needs and specific psychological training, as appropriate." See more at: DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, (61).

¹¹ Marder, Ian D. "Restorative Justice and the Council of Europe: An Opportunity for Progress." *Penal Reform International*, 4 July 2018.

able to access restorative justice services or opportunities that EU member states are providing.¹² While areas in the Directive such as Article 4.2 take a step in the right direction by addressing when and whether restorative justice possibilities may be explored soon after the crime, there is still a question of who will have access to these possibilities.¹³ Dr. Marder notes that these access problems are often due to “professional gatekeepers” who are unaware or unsupportive of restorative justice.¹⁴ These professional gatekeepers could exist at various stages in the trial process, further limiting the ability of the EU Directive to be implemented by a state. Since recommendations are not legally binding, such remedying of these domestic structural issues are in the hands of policymakers and state leadership.¹⁵

IV. Conclusion

The EU historically has been an advocate for victims’ rights and has followed modern victims’ rights trends by incorporating restorative justice into their 2012 Directive. If the EU wants to see the fruits of restorative justice for victims of crimes, it needs to take more specific action in its directives to member states. The 2012 Directive is useful as a good policy framework by means of implementing initial restorative justice measures, but a more comprehensive Directive establishing minimum expectations of capacity and accessibility of victims in member states to utilize restorative justice processes would allow for a more effective model to be integrated into domestic justice systems. If the EU promoted a more concrete model addressing these gaps, which prevent the equal access to restorative justice in member states, the EU could take another step closer to its priority of political unity. Such unity in this critical area of criminal justice would enhance the collective personality of the EU and its member states’ integrated sovereignty.

¹² Ibid., Lauwaert, Katrien. "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*, vol. 1, no. 3, 2013, 420.

¹³ Lauwaert, Katrien. "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*, vol. 1, no. 3, 2013, 420.

¹⁴ Marder, Ian D. "Restorative Justice and the Council of Europe: An Opportunity for Progress." *Penal Reform International*, 4 July 2018.

¹⁵ Ibid.

Bibliography

DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL.

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>

Lauwaert, Katrien. "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*, vol. 1, no. 3, 2013, p. 414-425. *HeinOnline*, <https://heinonline-org.access.library.miami.edu/HOL/P?h=hein.journals/restjust1&i=414>.

Marder, Ian D. "Restorative Justice and the Council of Europe: An Opportunity for Progress." *Penal Reform International*, 4 July 2018, <https://www.penalreform.org/blog/restorative-justice-and-the-council-of-europe/>.

McCormick, John, *European Union Politics*, Second ed. London; New York: Palgrave Macmillan, 2015. Print.

"Regulations, Directives and Other Acts." *European Union*, 7 Mar. 2019, europa.eu/european-union/eu-law/legal-acts_en.

"Types of EU Law." *European Commission - European Commission*, 12 July 2019, ec.europa.eu/info/law/law-making-process/types-eu-law_en.