



## RESTORATIVE JUSTICE AND VICTIMIZATION BELIEFS OF PROFESSIONALS IN EUROPE: IMPLICATIONS FOR VICTIM PARTICIPATION

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### **Abstract**

Restorative justice has proliferated in Europe and there is evidence suggesting that their practice is falling in debt to the victims of crime. The restorative justice policies seem not to be constituting genuine spaces of participating. Restorative justice policies appear not to be forming genuine opportunities for participation: victims do not have access to information about these services and their implementation is still far from fully considering their needs. This study was two objectives: explore beliefs about the victimization and restorative justice of professionals from restorative justice and victim support programs, and discuss the potential role of these beliefs on barriers to participation. This is a descriptive and exploratory study that used a qualitative and quantitative methodology, and considered a sample of 125 professionals from restorative justice and victim support programs, from 19 different European countries. The results suggest that professionals recognize the benefits that restorative justice can offer to victims of crime, however there are conceptions that appear to limit professionals to give more space to victims in making decisions.

**Keywords:** participation; beliefs; restorative justice; victims of crime; policies

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In recent decades, Europe has witnessed central changes in the way of conceiving and understanding the social reaction to conflicts or criminal crimes. Although traditional judicial procedures continue to lead the social response, alternative strategies that advocate for a participatory and inclusive reaction have been gaining ground. An example of this is the evident increase in restorative justice (RJ) programs in the last thirty years. Strategies such as victim-offender mediation, family conferences and peace circles are increasingly among the strategies implemented to respond to criminal conflicts, both in Europe and in other parts of the globe, including Latin America (see for example , Ehret, Dhondt, Fellegi, & Szego, 2013; Zinsstag & Vanfraechem, 2012).

### **Defining restorative justice**

The United Nations defines JR as “a way of responding to criminal behavior by balancing the needs of the community, victims and offenders” (United Nations, 2006, p. 6). For this Organization, JR is a methodology that allows solving problems through the involvement of those mainly affected and the offer of help from the community, both for the victim and the offender. This methodology would emphasize the reconstruction of human relationships and the search for agreements, and would have the ability to adapt to different cultural and social contexts.

The JR began to develop from the need to respond to three problems:

- a. The abandonment that the victim experiences by the criminal process when reduced to a testimonial role, and the damage that said process can cause by not respecting their time or responding to their needs (Dignan, 2005).



- b. The questioning of the penal system and its control instruments (such as prison) in terms
- c. of its preventive and resocializing role of the offender (Braithwaite, 2002).
- d. C. The limitation of the traditional penal system to provide responses to different social and cultural realities, involving members of the community (McCold, 2004; Pranis, 2001).

There are many practices and definitions of JR. However, independently of the characteristics of the restorative process, three central assumptions can be identified. First, JR assumes that not only the victim is affected by the offense. The offender and the community are also affected by the crime. Therefore, RJ is conceived as a triangular model where victim-offender-community are its main protagonists ("stakeholders") (McCold & Wachtel, 2002). Specifically, this means that any restorative practice must involve these three actors in order to provide a comprehensive response to the crime. Second, RJ assumes that individuals have the capacity and resources to confront and resolve the conflict that affects them on their own. The JR (judges and lawyers), By taking conflict from those who "stole" it and returning it to its "owners," it promotes individual and community empowerment (Christie, 1977). Third, the restorative approach assumes that crime is not an offense against the State, as retributive models assume, but primarily harm exerted against people and against human relationships. In other words, JR conceives the "harm" caused by crime as a phenomenon that has an individual component (the victim and the offender) and a social component (the relationship of the offender with the community and the relationship between offender and victim) (Walgrave , 2008). as the retributive models assume, but mainly damage exerted



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Most authors agree, therefore, that RJ has two central objectives: a) repairing the damage caused by the offense (Aertsen, Mackay, Pelikan, Willemsens, & Wright, 2004; Daly, 2000; Zehr, 2002) and b) the "empowerment" of those affected by the offense (Barton, 2000; Strang, 2004).

### **Participation in restorative justice: seeking inclusion and empowerment in crime victims <sup>1</sup>**

The United Nations defines a "restorative process" as any process in which the affected parties (offender, victim and community members) "jointly and actively participate in the resolution of the issues arising from the crime, usually with the assistance of a facilitator." (United Nations Organization, 2006, p. 7). Specifically, it is a strictly voluntary practice that allows the victim to engage in dialogue (direct or indirect) with the offender and confront him with the impact of the crime, express emotions, ask questions to understand the experience ("why me?" ), listening to the other party's explanations and "seeing" their expressions of remorse (Aertsen & Peters, 1998; Latimer et al., 2005; Morris, Maxwell, & Robertson, 1993; Ruge & Cormier, 2003; Shapland et al.,



2007; Sherman & Strang, 2007; Umbreit, 1994; Umbreit, Coates, & Vos, 2004; Wemmers & Canuto, 2002). The process also allows the victim to be part of the decision-making, as the parties involved in the process (victim, offender and, sometimes, community) discuss ways in which the harm can be repaired. These decisions or agreements can range from accepting an apology to agreeing to financial compensation, through commitments by the offender to participate in rehabilitation treatments, educational reintegration programs, etc. (Shapland et al., 2011). since the parties involved in the process (victim, offender and, sometimes, community) discuss ways in which the damage can be repaired. These decisions or agreements can range from accepting an apology to agreeing to financial compensation, through commitments by the offender to participate in rehabilitation treatments, educational reintegration programs, etc. (Shapland et al., 2011). since the parties involved in the process (victim, offender and, sometimes, community) discuss ways in which the damage can be repaired. These decisions or agreements can range from accepting an apology to agreeing to financial compensation, through commitments by the offender to participate in rehabilitation treatments, educational reintegration programs, etc. (Shapland et al., 2011).

When restorative justice constitutes a genuine space for participation, it should be a source of empowerment (Larson & Zehr, 2007; Zehr, 2005) and "procedural justice" (De Mesmaecker, 2011; Van Camp & Wemmers, 2013), helping to the victim's emotional process, fostering a feeling of "closure" and reducing symptoms such as fear, distress, and post-traumatic stress (Angel, 2005; Beven, Hall, Froyland, Steels, & Goulding, 2005; Bolívar, in press; Flaten, 1996 ; Gustafson, 2005; Roberts, 1995; Shapland et al., 2011; Strang, 2002; Van Camp & Wemmers, 2013; Zebel, 2012).



### **Restorative justice practices in Europe: genuine opportunities for participation?**

The main bodies that have promoted and regulated the use of JR on the Continent have been the Council of Europe and the European Union. The Council of Europe established in 1985 the Recommendations regarding the position of the victim in criminal proceedings (Recommendation No. R (85) 11) and invited Member States to consider greater participation of the parties in the resolution of the criminal case , such as victim-offender mediation and family conferences. In 1999, the Council of Europe presented its Recommendations for mediation in criminal matters (Recommendation No. R (99) 19), which establishes the main guidelines for its implementation: strict voluntariness to participate in the process and accept its agreements, confidentiality of its contents (also for judicial authorities),

The Recommendations of the Council of Europe are, as their name indicates, recommendations, and therefore their implementation is not an obligation for European countries, but rather a guideline for defining policies at the local level. The case is different with the regulations promulgated by the European Union, which are mandatory. In relation to JR, two relevant regulations have been enacted: in 2001, the Framework Decision on the Position of the Victim in Criminal Procedures (2001/220/JHA) and in 2012 the Directive on Minimum Standards of Victims' Rights (Directive 2012/29/EU), which replaces the Framework Decision. Both regulations refer to the situation of crime victims and although they do not focus exclusively on JR programs, they are taken into account.

Directive 2012/29/EU makes it mandatory to inform crime victims about the availability of RJ services. However, the Directive, unlike the



Recommendations, accentuates the protective measures that RJ programs must adopt to protect vulnerable victims (Lauwaert, 2015), highlighting notions such as risk assessments, vulnerable victims and protective measures.

At the local level, the role that restorative justice processes have or can have within the criminal procedure will depend on the legislative framework of each country. Although RJ has been used in serious cases and as a complementary service to criminal proceedings, as is the case in Belgium, Holland, Canada, the United States and New Zealand (Aertsen et al., 2004), studies have indicated that in its vast majority (as also happens in Europe), JR has been used as an alternative conflict resolution system that can replace the judicial process or have an impact on the definition of the penalty, as is the case of Spain, Portugal, Finland and Austria (Bolívar, 2014; Bolívar, Pelikan, & Lemmone, 2015). In other words, JR has tended to be conceived more frequently as a judicial measure,

### **Victims and participants?**

Recent evidence has suggested that in European restorative justice practice there are two types of barriers, on the part of victims, to genuine participation in these processes. Firstly, victims tend not to be informed about this possibility, which significantly limits their access to this practice. European reports, such as those prepared by APAV and INTERVICT (2009) and Matrix and Felix (2010), confirm the lack of information as one of the most important problems affecting crime victims in the context of RJ. Other investigations, such as those of Tamarit, Villacampa and Filella (2010) and Maxlinarayan (2014), have reached similar conclusions. Second, JR practice appears not to be sufficiently considering the needs of victims. In a recent study, It has been concluded that the European implementation of JR has been mainly a "diversification"



(diversion) mechanism, which means that it has focused on minor crimes, faster processes and mainly focused on the result, putting at risk the centrality of the victim in the process. These contextual elements would also be predetermining the type of topics that are discussed in these instances, thus limiting the potential for communication between the parties (Van-fraechem, Bolívar, & Aertsen, 2015). putting at risk the centrality of the victim in the process. These contextual elements would also be predetermining the type of topics that are discussed in these instances, thus limiting the potential for communication between the parties (Van-fraechem, Bolívar, & Aertsen, 2015). putting at risk the centrality of the victim in the process. These contextual elements would also be predetermining the type of topics that are discussed in these instances, thus limiting the potential for communication between the parties (Van-fraechem, Bolívar, & Aertsen, 2015).

The present investigation has been developed under the hypothesis that the previously mentioned problems originate, in part, in the beliefs that professionals or social operators have about criminal victimization. Some of these beliefs would be the basis for hesitations about the capabilities and resources that crime victims might have to get involved in a RJ process. This hypothesis is based on the contradictions that are usually found in the JR discourse: on the one hand, participation is promoted for all victims and in all circumstances, which presupposes trust in the personal resources of citizens affected by crimes (such as Recommendation of the Council of Europe R (99) 19 does so, when, on the other hand, the vulnerabilities and therefore the risks of victim participation in JR are emphasized (as does the European Union Directive 2012/29/EU). In academia, visions focused on needs also coexist with visions focused on resources (Aertsen, Bolívar, De Mesmaecker, & Lauwers,



2011; Bolívar, 2010; Rappaport, 1981). If we assume Zimmerman's (2000) notion that an "empowering organization" is one that opens opportunities for participation in decision-making, allows sharing responsibilities and leadership, we would also assume, therefore, the assumption that an image of a victim as a subject in need would hinder the possibilities of participation. In academia, visions focused on needs also coexist with visions focused on resources (Aertsen, Bolívar, De Mesmaecker, & Lauwers, 2011; Bolívar, 2010; Rappaport, 1981). If we assume Zimmerman's (2000) notion that an "empowering organization" is one that opens opportunities for participation in decision-making, allows sharing responsibilities and leadership, we would also assume, therefore, the assumption that an image of a victim as a subject in need would hinder the possibilities of participation. In academia, visions focused on needs also coexist with visions focused on resources (Aertsen, Bolívar, De Mesmaecker, & Lauwers, 2011; Bolívar, 2010; Rappaport, 1981). If we assume Zimmerman's (2000) notion that an "empowering organization" is one that opens opportunities for participation in decision-making, allows sharing responsibilities and leadership, we would also assume, therefore, the assumption that an image of a victim as a subject in need would hinder the possibilities of participation.

### **Opportunities for participation and beliefs of professionals**

In this article, we analyze the participation opportunities for crime victims, focusing on the beliefs of RJ professionals (who offer and implement RJ programs) and victim support (VA), who are potential referrals to programs. by JR. The question to be answered is what beliefs RJ and VA professionals have in relation to victims and RJ. Specifically, it is interesting to identify in their speeches elements that indicate confidence in the personal resources of the



victims to actively participate in restorative spaces, that is, in a process of communication with the offender and take part in the decision-making regarding their case.

### **Research design**

#### **Study objectives**

The study shared in this article is part of a larger investigation whose main intention was to investigate the position of the victim in restorative justice programs in Europe. This article focuses on one of its substudies, which aimed to explore the beliefs of both RJ and AV professionals about criminal victimization and RJ and to analyze the potential role of these beliefs in victim participation in RJ.

#### **Methodology, participants and procedures**

The study from which this article is derived was exploratory and descriptive. This means that the intention was not to generate data that could be generalized to the entire European reality. JR programs present such diversity (in methodological terms, coverage, target group and relationship with the penal system) that any attempt to generalize results would be inappropriate. Rather, this study was conceived as a first exploration towards problematizing the role of professionals in offering spaces for participation.

To design the methodology, it was assumed that it was relevant to incorporate both RJ professionals and AV professionals in the sample, as they are the two institutional instances that usually have the greatest contact with crime victims. AV programs, furthermore, constitute one of the only instances that could ensure greater access for victims to RJ. Its proximity to crime victims not only gives AV programs a privileged place for the delivery of information on



RJ, but could also ensure, through this role, more equitable access to RJ between victims and offenders <sup>2</sup> .

This research combined qualitative and quantitative data collection strategies. Although both methodologies had the same objective (identifying beliefs regarding victims and their participation in RJ), both data sets had different emphases. While the qualitative study collected impressions from key informants who had a national perspective of the phenomenon, the quantitative study collected the perception of professionals dedicated to direct care of cases. European organizations such as the European Forum for Restorative Justice and Victim Support Europe helped identify first RJ and VA programs and then professionals throughout the Continent.

Once potential key informants were identified, the procedure consisted of contacting these individuals, generally by email, in order to request their participation in the study and/or request their help in locating other members of their organization. All those who were finally invited to take part in the study were identified as key informants, either because of their knowledge of the situation of the JR or AV Programs at the national level (qualitative study) or because of their practical experience in both programs at the local level. (quantitative study). All sample members were, therefore, purposively selected.

Once identified, potential participants were contacted by email, explaining the purpose of the study and the type of participation required. Once their motivation to participate was expressed, they were sent the link to the online survey or an interview date was agreed upon, depending on the case. Participation in this study was indicated as voluntary and confidential.

When JR or AV were services operating with national coverage, all interviewees from a country therefore belonged to the same organization, but



their membership in different regions was promoted. When the services were provided by different organizations, it was hoped that the participants belonged to different institutions.

### **Quantitative study**

The quantitative study consisted of an online questionnaire (in English) created especially for this study, which consisted of 64 items, combining open questions, multiple choice questions and scales. The topics to be evaluated included the legal framework of the JR, institutional context, objectives, training of mediators and facilitators, description of the program (type of cases attended, characteristics of the preparation, meeting and follow-up), intervention times, evaluation of results and opinions around victim participation in restorative justice.

The goal of the study was to survey six interviewees per country, that is, three from JR programs and three from AV programs, as long as these programs were in operation. Indeed, given the disparate degree that European countries have in terms of development of JR and AV programs (there are countries with no or little development of JR or AV or with discontinued, incipient or fragmented experiences), this number was not achieved in all of them. countries.

The questionnaire was answered by 68 professionals directly involved in the practice of mediation or family conferences and by 35 professionals from victim support programs. Table [1](#) shows the number of key professionals detected and contacted by country and the final number of participants.

The data were analyzed descriptively (in terms of frequency) and comparisons between RJ and VA professionals were made, when relevant and possible.



### **Qualitative study**

This study focused on countries with strong and stable development of JR or AV, or both, either in terms of public policy or long tradition and experience in these practices<sup>3</sup>. The qualitative study consisted of conducting 17 semi-structured interviews with 12 key informants. of the implementation of JR in their countries and 5 key informants from Victim Support programs.<sup>3</sup> . These informants were chosen because they held a central position (at the national level) in their organizations, which would allow them to offer an overview of the implementation of the program. These experts were interviewed by telephone or in person.

During the semi-structured interview, the following topics were covered: characteristics of program implementation, case eligibility, characteristics of the restorative process, and aspects related to victim participation. All interviews were recorded with the permission of the interviewees and later transcribed. The qualitative data were analyzed descriptively, using the axial coding method proposed by grounded theory (Charmaz, 2006), with the help of NVivo software.

In sum, in this study, a total of 80 RJ professionals and 40 professionals from Victim Support programs participated, representing a total of 19 European countries: Germany, Austria, Belgium, Bulgaria, Denmark, Spain, Finland, France , Greece, Holland, Hungary, Ireland, Latvia, Luxembourg, Norway, Portugal, United Kingdom (including participants from Scotland, Northern Ireland and England), Romania and Sweden.

### **Results**

The results have been divided into two sections: what JR offers (and does not) to crime victims and the offer of mediation. To make the results of the study more understandable, quantitative and qualitative data are described successively at each point that was to be addressed, whenever information was available from each data set <sup>4</sup>.

### **JR: what it offers (and does not) to crime victims**

One of the topics explored in the survey was professionals' perception of the benefits and risks of RJ, from the point of view of crime victims. This theme was incorporated with the objective of detecting the ways in which both parties conceptualized RJ and its potential for people with experience of criminal victimization. Two open questions investigated this topic: "What are the main benefits of restorative justice for crime victims?" and "What are the main risks of restorative justice for crime victims?" The responses provided were categorized and listed to calculate their frequency <sup>5</sup>.

### **Benefits**

The benefits mentioned by professionals were categorized into (a) results of restorative justice, (b) effects of the process, (c) benefits related to its methodology, and (d) legal benefits. These results can be seen in [Table 3](#).

Regarding the results of the process, both groups identify the possibility of obtaining emotional reparation, which is manifested in receiving recognition (believed and validated in their status as a victim) and receiving an apology from the offender. Both groups also recognize financial compensation as a desirable outcome for victims.



AV and RJ professionals also agree that RJ can have positive psychological effects for victims, especially in the cognitive and emotional sphere. By having the possibility to ask questions of the offender, the most important psychological effects are to understand what happened and understand the circumstances in which the offender acted. Both groups also referred to a series of positive emotions that could arise as an effect of victims' participation in RJ, such as decreased anxiety, feelings of guilt, or increased feelings of security and empowerment.

There were also responses that indicated the advantages of the participatory and communication methodology of JR. In this aspect, both groups presented a slight difference. For AV professionals, RJ can provide an instance where the victim can be heard, can express themselves freely and have an active role in the process. JR professionals, on the other hand, although they agree on all these points, especially emphasized the not only active, but also central role of the victim in decision-making regarding how to resolve the conflict. On the other hand, both groups of professionals also emphasized the relational advantages of opening a communication channel between both parties. Victims could confront the offender with the consequences of the crime and, through meeting in person, demystify him (see him as a human, not a monster) and even have the opportunity to help him. JR professionals added to these benefits elements that are related to the re-construction of the relationship between victim and offender (re-balancing or rebuilding the relationship).<sup>6</sup>.

Finally, both groups identify as a benefit the possibility of avoiding a trial (when JR is understood as a diversification mechanism) and of having, instead, access to a faster, more informal and less bureaucratic process.



In summary, the results of the present study indicate that the vision of AV professionals is not particularly far from the vision of RJ professionals, in terms of the potential benefits for victims. Both groups recognize benefits of emotional repair, material repair and attribute cognitive benefits (especially meaning) and emotional benefits (reduction of negative symptoms, such as fear) to the process. Both groups also recognize relevant aspects in terms of the advantages of the process, its relationship with the criminal system and the potential for victim participation. However, some RJ professionals also mentioned the possibility of playing a key role in resolving how the damage can be repaired.

### **Risks**

In terms of risks, in the analysis it was possible to distinguish risk factors associated with the actors in the process (mediator, victim and offender) and the moments of the intervention (referral, preparation, meeting itself and reparation agreement).

In relation to the actors in the process, and in particular, with the mediator, both groups agree that the risks may come from a mediator with insufficient knowledge or training, or from a facilitator with a tendency to bias his intervention towards the offender, not providing sufficient attention to the victim. Both groups also agreed that the offender could be a source of risk, especially when he does not assume responsibility, is motivated by judicial benefits or does not comply with the agreement and, therefore, his conduct does not coincide with the attitude demonstrated in the case. restorative encounter.

Regarding the risk factors coming from the victim, AV professionals believe that she may not be psychologically prepared or be vulnerable. She may also develop feelings of revenge as a consequence of her encounter with the



offender. JR professionals agree with these points, but also add their concerns about victims in a vulnerable position in relation to the offender, being forced to confront already closed issues, not having support figures during the process and being pressured to participate to avoid the court. Risks of the victim-offender relationship were also seen by both groups, such as victimization due to power imbalances and manipulation of the offender towards the victim.

The stages of the intervention could also carry risks. The points of greatest coincidence have to do with insufficient preparation and management of expectations, instrumentalization of the victim in the restorative encounter and low or no financial compensation. To this, AV professionals add the risk that the crime will be minimized through the restorative process, crime minimization, experiences of pressure (either to accept an apology or a solution), and that victims' questions may not be addressed. answered. RJ professionals also see risks in the referral phase (late referral), poor access to legal or other information to decide on their participation, poor risk assessment and lack of coordination with VA services.

### **The mediation offer**

In addition to items that sought a description of RJ procedures, the questionnaire included items that probed opinions of RJ professionals and Victim Support offices in relation to people considered "suitable" for a restorative process. In this way, beliefs would be identified that could become either facilitators or obstacles to victims' access to information about RJ programs.

### **JR's offer and its possible effects**



One of the key aspects to determine the possibilities of victim participation in instances of RJ is to determine who it is considered should be offered the service and why. That is, if from the point of view of professionals' beliefs, there should be certain filters to invite victims to participate and based on what criteria.

More than 50% of the participants, both in the JR (56%) and AV (59%) groups, disagreed or strongly disagreed with the statement "The offer of mediation is harmful to those who reject it." Despite this majority, qualitative data suggest that in practice, RJ is not offered spontaneously. Two of the key informants working in AV from a national perspective commented that AV officials do not usually inform victims about JR, unless the victims spontaneously talk about their motivation for meeting the offender.

A second topic addressed was the way of offering the service, that is, whether the victim should be contacted before or after the offender is contacted. Our results indicate that although 50.7% of RJ professionals agreed or strongly agreed with the statement "If the victim is contacted before the offender, and the offender rejects RJ, the victim may suffer secondary victimization", AV professionals They showed greater distribution in their responses (only 42.8% agreed or strongly agreed). The statement "If the victim is contacted after the offender, the victim may think that the program is biased in favor of the offender" was supported by 62% of AV professionals, but only supported by 24.8% of RJ facilitators. In other words, when comparing the averages obtained in each item,

The qualitative study, however, showed different emphases. Two of AV's interviewees emphasized the risk of secondary victimization, when the offer to the victim takes place before clarifying the offender's motivation. The offender

may change his mind about participating in RJ (AV: 4) or her refusal may lead the victim to think that the offender is the one who controls, once again, the situation (AV: 3). On the contrary, although many RJ professionals did not seem to have a specific preference for how to begin a restorative procedure, a couple of them highlighted the relevance of starting with the victim in serious cases to give a signal of recognition of their victim status (JR:8) or in cases of domestic violence, to avoid pressure from the offender in the process of deciding whether to participate or not (JR:3).

**TABLA 5**  
*Opiniones acerca del ofrecimiento de JR a víctimas de delito separado en profesionales de JR y de AV*

	JR			AV		
	Desacuerdo (%)	Indeciso (%)	Acuerdo (%)	Desacuerdo (%)	Indeciso (%)	Acuerdo (%)
El ofrecimiento de mediación es dañino para quien lo rechaza.	56.5	24.6	13	59	25	8.6
Si la víctima es contactada antes del ofensor, y este rechaza JR, esta puede sufrir victimización secundaria.	26.1	20.3	50.7	34.2	22.9	42.8
Si la víctima es contactada después del ofensor, esta puede pensar que el programa tiene un sesgo a favor del ofensor.	40.6	24.6	24.8	20	17.1	62.8

N = 99

Fuente: elaboración propia

In summary, the data collected indicates that there is no single perspective in relation to the offer of mediation and the effect it may have. There are concerns among both RJ and AV professionals about the effects that offering RJ could have on the victim, either before knowing the offender's opinion or after working with him or her. Furthermore, although a majority believes that the offer of RJ is not harmful in itself, information obtained in the interviews indicates that AV professionals tend not to mention the topic spontaneously.

### **The role of the professional in the decision to participate**

The present study also explored the beliefs of the interviewees about the powers that they granted to the professional to decide the origin of a case for a JR process. In other words, how professionalized they saw this intervention and what role they gave to users in general (and victims in particular) in this decision.

In general, over 70% of respondents (both RJ and AV) gave the RJ professional (facilitator or mediator) a central role in the decision of whether or not to proceed with RJ in certain cases, even when this decision is in question. against the will of the victim and offender ( [Table 6](#) ).

**TABLA 6**  
*Opiniones acerca de casos y víctimas inapropiadas para mediación*

<i>¿Puede un mediador/facilitador considerar un caso inadecuado para JR, a pesar de la voluntad de las partes para seguir adelante?</i>	<i>RJ (Porcentaje de respuestas afirmativas)</i>	<i>VS (Porcentaje de respuestas afirmativas)</i>
<i>Un caso podría considerarse inapropiado para JR a pesar de la voluntad de ambas partes de participar.</i>	91.3	77
<i>Una víctima podría considerarse inapropiada para JR a pesar de su voluntad para participar.</i>	76.8	76.4

N = 103

Fuente: elaboración propia

When openly asking in what situations mediators or facilitators could make this decision, respondents mentioned: lack of taking responsibility on the part of the offender, vulnerable or angry victim, situations of threat, fear, risk or pressure to participate. Unrealistic expectations and a therapist's suggestion not to proceed would also be reasons to discontinue a process.

The qualitative study provided more nuances to this topic. Most JR interviewees indicated that the decision to stop a process at the initiative of the mediator and against the will of the parties was an exceptional situation. The main reason, they explained, is that the owners of the conflict are the parties and it is they who must decide, knowing in detail the circumstances in which their

participation will occur. For example, the victim has the right to choose whether, knowing the offender's lack of acceptance of responsibility, she still prefers to meet him and confront him with the harm caused by the crime:

If we see that the offender is not appropriate for JR], the victim must decide whether he is appropriate or not (...) if the offender does not feel guilty this is probably not appropriate for JR], but if the victim she still wants to go, it's up to her to decide. (JR:3)

For one of the interviewees, two exceptions to this rule are child victims or people with serious mental health problems.

Except for these two situations, the mediator cannot stop a process on his own. Rather, it may recommend suspension when it is seen that the expectations of both parties, and what each one wishes to put into the process, do not coincide. (JR: 9)

The decision of a mediator or facilitator to stop a JR process against the will of the parties may rather reflect different situations:

- a. The mediator/facilitator's fear of handling a difficult conflict.

In the early days of the service, some facilitators faced a very aggressive offender and said much more easily 'I'm not going to continue', but now the facilitators have more training in how to work with aggressive young people (...). Now we have very few cases where we don't do conferences. If there are mental health issues we can say it is difficult, but currently we can work with every young offender no matter how difficult he or she is. Because it's all about doing] good preparation. Also in terms of preparing the victim and saying 'this person has difficulty expressing themselves, they may not react the way you expect them to react'. When a facilitator tells me 'I can't do this conference' I always say 'Are you

worried that you can't do it?' I think it is the problem of the facilitator who is scared. We cannot limit the parties'] participation in the conference because we are the ones who cannot help them. (JR:2)

- b. The reflection of preconceptions about what a crime victim should or should not be.

Professionals cannot be paternalistic, and accept the victims' decision to participate, as well as not take for granted how a victim should think and behave. (JR:7)

- c. The tendency of professionals to make decisions on behalf of victims, because they (believe) they know what is good for them.

We are good collaborators with AV, but the problem we have is that we have a lot of resistance, they say] the victim is not ready for this, and I think, how do you know that? It is they the AV professionals] who decide if The victim is ready or not, I cannot understand that (...). People don't understand if the victim needs to do that mediation], it's hard to understand. There is a translation problem. We have to translate this to others. (JR:8)

- d. What does it mean when you say 'this victim is not ready'?

A: To be honest, I don't know. I believe that our colleagues at JR are right: we only think about them when the victim mentions their interest in communicating with the offender, but we do not initiate this (...), I think that the focus of AV is the victim's relationship with the court, not with communicating with the offender. (AV:4)

- e. The difficulty in visualizing the possibility of participation of victims of serious crimes in JR, especially sexual crimes.

We AV professionals are overprotecting victims, we are more skeptical especially in cases of serious crimes, especially in cases of rape victims who want to meet with their offender. (AV:3)

In sum, our explorations lead us to conclude that there is a view, among both RJ and VA professionals, that professional opinion is decisive when considering the suitability of a case for RJ, especially in serious cases.

The profile of the cases, however, would not be the only factor that would explain the viability decision. Another determining factor would be the beliefs that social operators have about what it means to 'be a victim of crime' and the fears that may appear when facing difficult cases.

JR professionals understand that one of their powers as facilitators is the possibility of suspending a process at their own discretion and against the will of the parties. However, this would be an exceptional measure given the leading role that the parties must have in the decision.

### **Vulnerable victims and traumatized victims**

Our questionnaire also explored the beliefs respondents held about the possibilities of traumatized or vulnerable victims undergoing RJ. As can be seen in [Tables 7](#) and [8](#) , RJ and AV professionals tended to differ in their evaluation of vulnerable or traumatized victims as suitable participants for RJ processes. While, on average, AV respondents tended to reject the RJ option for both groups of victims, RJ professionals supported it ("Vulnerable victims cannot participate":  $U = 1.568$ ,  $p = 0.001$ ; "Traumatized victims cannot participate":  $U = 1.494$ ,  $p = 0.008$ ).

53% of RJ professionals disagreed or strongly disagreed with the statement "traumatized victims cannot participate in RJ instances unless they are evaluated by a professional" and 63.8% disagreed with the same statement, but in relation

to vulnerable victims. VA professionals tended to agree with RJ in cases of traumatized victims (45.7%) but to disagree in cases of vulnerable victims (51.4%). The idea of involving people from the family network or significant others as a sine qua non for the participation of traumatized or vulnerable victims received more support from AV (48.6% and 51.4%, respectively) than from RJ professionals ( 33.3% and 37.3%, respectively).

**TABLA 7**

*Creencias sobre las posibilidades de participación de víctimas traumatizadas en JR desglosadas por profesionales de JR y AV*

	JR			AV		
	Desacuerdo %	Indeciso %	Acuerdo %	Desacuerdo %	Indeciso %	Acuerdo %
Las víctimas traumatizadas no pueden participar en instancias de JR.	53	20.3	23.1	34.3	17.1	48
Las víctimas traumatizadas no pueden participar en instancias de JR a menos que sean evaluadas por un profesional.	46.3	24.6	24.6	45.7	17.1	37.7
Las víctimas traumatizadas no pueden participar en instancias de JR a menos que sean acompañadas por una figura de apoyo.	33.3	30.4	33.3	25.7	25.7	48.6

Fuente: elaboración propia

**TABLA 8**

*Creencias sobre las posibilidades de participación de víctimas vulnerables en JR desglosadas por profesionales de JR y AV*

	JR			AV		
	Desacuerdo %	Indeciso %	Acuerdo %	Desacuerdo %	Indeciso %	Acuerdo %
Las víctimas vulnerables no pueden participar en instancias de JR.	63.8	24.6	8.7	37.2	20	42.2
Las víctimas vulnerables no pueden participar en instancias de JR a menos que sean evaluadas por un profesional.	69.6	15.9	11.5	34.3	14.3	51.4
Las víctimas vulnerables no pueden participar en instancias de JR a menos que sean acompañadas por una figura de apoyo.	36.2	21.7	37.6	20	28.6	51.4

Fuente: elaboración propia

The majority of JR respondents stated that JR should be offered to all victims, regardless of the type of crime (56%) and time in the penal system (59%), and they are even of the opinion that JR can offer greater benefits to victims of



serious crimes (56%). However, Victim Support professionals (who are important referring institutions to RJ programs) have more divided opinions on the matter. 45% disagree with an offer open to all victims regardless of case type and 53% disagree with offering JR at any time in the criminal system. Furthermore, 78% do not believe that JR works better in cases of serious crimes and 63% tend to believe that JR, when applied to minor crimes, should focus primarily on financial compensation (vs.

Interviews with key informants also shed light on this issue. A question to decipher is what is meant by a vulnerable or traumatized victim. One option is that there is a tendency to equate the consequences of victimization with indicators of vulnerability.

We hear that often. That the victim is very angry or very sad, or very... too many emotions seems to be a bad indicator. When we think precisely the opposite, because all those emotions can be discussed in mediation. I don't see a reason not to discuss it with the victim. Simply as an offer, as a possibility, then] it is up to the victim to decide what to do. (JR:8)

For some RJ professionals, being in the presence of a vulnerable or traumatized victim, but willing to RJ, does not mean stopping the process, but rather carrying out detailed preparation (JR:1; JR:7) taking protective measures, such as including and involving the members of the victim's close network (JR:1) or carefully define what people want to get out of the process.

In a first interview we can easily see if the victim is traumatized, but if she really wants to go to mediation we will never do it without asking for help from people in her close network or from therapists, this has to be in parallel, if we see that the victim If you need any kind of help we refer you, we have a good support network. (JR:3)



In this country what you see very often is that people make assumptions about what people want from JR, because what victims may want from JR can be very varied. (JR:7)

For other interviewees (both JR and AV), however, being in the presence of very traumatized or violated victims implies stopping the JR process since "we have to know that what we do is safe for the victim" (JR:6) , especially in cases of power imbalances such as minor victims (AV:4).

In summary, our data indicate that AV and JR programs would approach the victim from different perspectives. AV professionals tended to emphasize professional opinion to determine the viability of a case, the importance of the participation of support networks as a requirement for the participation of the vulnerable or traumatized victim, and the visualization of RJ as a strategy for certain types of cases (minor or medium serious crimes). JR professionals, on the other hand, tended to present, although not unanimously, an opposite opinion. Their responses suggest a position that promotes JR as an open offer to all types of cases and victims. Some interviewees even considered vulnerability or risk not as a limitation to participation,

### **Conclusions and discussion: challenges of victim participation in the field of justice**

The present study has important methodological limitations that must be made explicit before presenting the conclusions. First, the sample participants share a bias: the language of data collection was English and therefore only those who were able to read and answer our survey (or respond to our interview) participated. Secondly, the low number of participants achieved in the



subsample of AV professionals may indicate two things: a) that the strategies to identify these professionals were not successful b) that only those who believed they knew about JR, the main topic of the survey and interview, they accepted our invitation. These biases are of primary relevance to contextualize and problematize the results, since they are indicating a process of self-selection of the sample.

Secondly, the N of the sample also implies important methodological limitations, especially for the quantitative study. Although statistical generalization was not part of our objective, another type of sampling could have been useful. For example, a stratified sample could shed light on the discourses of professionals working in different types of AV programs.

That said, our main conclusions relate to three aspects: offer of RJ, eligibility criteria to participate in RJ, and offender responsibility.

### **Offering Restorative Justice for Crime Victims**

The data indicate that, although both RJ and AV professionals agree that simply offering RJ to crime victims would not have a negative impact, it is also evident that, in practice, information on RJ It does not seem to reach crime victims so easily. This contradiction seems to be demonstrating that the issue is still an unresolved issue in practice. The statement of the victim's position in the mediation process carried out by the organization European Forum for Victim Services (2003) makes evident the fears that prevailed a few years ago and that, in light of our evidence, still seem to prevail: "the Invitation to meet with the offender is a powerful intervention that can impose unwanted responsibilities on victims.

As mentioned in previous publications, the lack of information about RJ programs can be, in itself, a source of victimization. Empirical evidence



suggests the importance for crime victims to have information about the possibility of RJ and for these programs to be available and accessible (Bolívar, 2012a; Wem-mers & Van Camp, 2011). People affected by a crime could, by having information about the existence of these programs, decide when to start a restorative process, being able, in other words, to participate in the decision-making process from the beginning. This need is relevant taking into account that a) the victim's times are not necessarily related to the times of the judicial system (Lauwaert, 2015) and b) victims can perceive,

### **Selection criteria to participate in restorative justice**

While proponents of RJ insist on the centrality of the concept of empowerment as a goal and principle of RJ (Barton, 2000; Larson & Zehr, 2007), other authors emphasize the importance of ideas such as eligibility and adequacy ("eligibility" and "suitability") (Centre for Innovative Justice, 2014). In other words, there is a tension in the literature between a competency approach and a deficiencies approach, which leads to a corollary tension between returning the conflict to the parties and professionalizing the decision to select suitable cases for RJ. It has already been previously discussed how the judicial system has become the main filter for access to JR (Bolívar, 2012) and, in this article, how public policies have highlighted the relevance of notions such as risk assessment and safeguards. The Center for Innovative Justice (2014), for example, proposes a case selection process in two different stages: eligibility and suitability. Eligibility is the selection of cases according to certain objective criteria (such as type of crime) and appropriateness involves a more subjective evaluation process that can be carried out through instruments or clinical interviews. For them, important eligibility criteria are an offender who takes responsibility and a victim who participates in complete freedom and



knowledge of her rights. Eligibility is the selection of cases according to certain objective criteria (such as type of crime) and appropriateness involves a more subjective evaluation process that can be carried out through instruments or clinical interviews. For them, important eligibility criteria are an offender who takes responsibility and a victim who participates in complete freedom and knowledge of her rights. Eligibility is the selection of cases according to certain objective criteria (such as type of crime) and appropriateness involves a more subjective evaluation process that can be carried out through instruments or clinical interviews. For them, important eligibility criteria are an offender who takes responsibility and a victim who participates in complete freedom and knowledge of her rights.

This does not mean that the JR should not evaluate risks or take safeguards. On the contrary, mental and physical safety is an ethical imperative of RJ intervention (United Nations, 2006). The "empowering" or "limiting" nature of a risk assessment seems to have to do, however, with the use made of it. As commented by some of our interviewees, and in accordance with an empowering philosophy, risk detection should not necessarily limit access to RJ for people willing to attend. Rather, it would allow strategies to be developed that guarantee a safe restorative process for all its participants. Mercer & Sten (2015)

### **Responsibility of the offender vs. the needs of victims**

Although the taking of responsibility by an offender is a recognized eligibility criterion (United Nations Organization, 2006), recent studies in the field of sexual crimes indicate that RJ processes can be carried out in cases of offenders with difficulties to accept responsibility under the condition that the victim, knowing this situation, is still willing to meet with the offender. Even in these



circumstances, mediators have observed beneficial processes for both parties (Mercer & Sten, 2015).

The final conclusion is that despite the centrality of the notions of participation and empowerment in RJ, the beliefs of professionals, and in particular those who have the possibility of informing and referring (such as VA services), seem to be seriously hindering victims' access to JR programs. These beliefs position and typify the victim as a needy and vulnerable individual who must be protected and helped by the professional. In parallel, and despite recognizing in the discourse the potential benefits it has, RJ is viewed as a methodology that has little or nothing to do with the reparation of the victim (as one interviewee announced, AV focuses more on the relationship with the courts than in supporting the victim to meet the offender). For its part,

Important tasks for research and public policy emerge from these conclusions. Firstly, generating genuine spaces for participation for crime victims implies opening up to more varied ways of understanding criminal victimization (Dachy & Bolívar, 2013). It is as necessary to study and understand the variability of the needs of crime victims as it is to sensitize social operators about (a) the benefits and methodologies of JR and (b) the competencies of crime victims. Secondly, greater conceptual and scientific development of notions such as vulnerable victim, risk assessment and safeguards in RJ is necessary. These notions are of utmost importance in the context of the implementation of Directive 2012/29/EU.

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### **Footer**

<sup>1</sup> Restorative justice must constitute a "win-win" experience for all its actors, including offenders and the community (Koss, 2014; Latimer, Dowden, &

Muise, 2005; Miller, 2011; Miller & Hefner, 2015; Pranis, 2001 ; Roberts, 1995; Shapland, Robinson, & Sorsby, 2011; Strang, 2012; Sherman & Strang, 2007; Sherman, Strang, Mayo-Wilson, Woods, & Ariel, 2014; Umbreit, Vos, Coates, & Brown, 2003) .

<sup>2</sup> The main instances referring to JR (judges and prosecutors) tend to have greater contact with offenders (Bolívar, 2015; Laxminarayan, 2013).

<sup>3</sup> The list of countries in [Table 2](#), where interviews were conducted, is not exhaustive. Practical and non-methodological reasons explain the absence of some countries (such as the Netherlands and Austria).

<sup>4</sup> The contents extracted from semi-structured interviews are identified with letters and numbers. Thus, interview 1 of a professional from the JR area is indicated JR:1 and interview 1 of a Victim Support professional as AP:1.

<sup>5</sup> Given that each participant usually responded referring to more than one content, the frequencies obtained (indicated in parentheses in [Table 3](#)) indicate the number of people who referred to that topic. Therefore, the total number of responses does not coincide with the total number of participants in the survey, but with the total number in which each topic was mentioned.

<sup>6</sup> The type of content involved in these responses suggests that these participants were referring specifically to cases of domestic violence.

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