INDEPENDENT ACADEMIC RESEARCH STUDIES

A VICTIM-LED CRIMINAL JUSTICE SYSTEM: ADDRESSING THE PARADOX

Edited by Theo Gavrielides

IARS | Community-led solutions for a fairer society

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Editor's Note & Acknowledgements

Theo Gavrielides

It is a great privilege to edit this book at a critical point in the development of new criminal justice policies internationally. These reforms will arguably see the victim moved from the margins to the centre of state attention. This is particularly true for Europe.

We tend to forget that the criminal justice system is a modern construct. In fact, much of what we understand today as 'crime' was seen by early communities as a conflict between individuals, while the terms 'offender' and 'victim' were coined as a result of our modern, legal positivistic framework. Despite my legal background, the term 'victim' makes me feel uncomfortable as it fails to acknowledge that in the harsh and complex reality of crime, the lines between labels are often blurred. However, for the purposes of this book and a constructive debate that will hopefully help us move the forgotten stakeholders out of the shadows, I accept the term.

According to historians, the victim was gradually pushed to the margins as the interests and power of the state overtook those of the individual. This created a paradox that has endured for centuries. Moving victims out of the shadows cannot be an easy task, as the same power structures that put them there remain strong even in our modern societies.

It took humanity two World Wars and many civil conflicts to come to the table to agree to minimum standards of behaviour for states. These were intended to control this state-led attitude including that impacting on criminal justice. We called them 'human rights' and recorded them in international documents such as the Universal Declaration of Human Rights (UDHR) and the European Convention on Human Rights. I have always argued that the criminal process and the administration of criminal justice by state agents is the field of battle in which human rights are tested. Therefore, over many years, questions were being raised by communities, the victims' movement and other civil society organisations about states' behaviour and compliance with the human rights of victims in the criminal process.

In Europe, its Union had no other choice but to respond to this questioning. In the hope of achieving consistency in victims' rights protection across the EU, in 2001, the Commission passed a Framework Decision, but this did not go far and deep enough. As a result, we now have a Victims' Directive which must be translated into domestic laws and policies by November 2015. It is hoped that this will provide a baseline for minimum guarantees for victims.

Since passing the Directive, the EC invested resources in order to prepare member States for its implementation. After a competitive process, IARS' project Restorative Justice in Europe: Safeguarding Victims and Empowering Professionals (RJE) was successful in receiving an EU grant and I had the honour of coordinating its scientific and practical ambitions and outputs. Over twenty-four months, IARS worked closely with its four European partners Restorative Justice Nederland (Netherlands), the Institute of Conflict Resolution (Bulgaria), European Public Law Organization (Greece), and University of Applied Sciences (Germany). We were also supported by 12 Associate Partners who are experts in the area of victims and restorative justice: the University of Cyprus (Cyprus), Restorative Thinking (UK), the Register of Restorative Practitioners (UK), Restorative Justice International (USA), the Forgiveness Project (UK), HM Prison Altcourse (UK), the European Forum for Restorative Justice (Belgium), the

Centre for Restorative Justice at Simon Fraser University (Canada), Prof. Gerry Johnstone (UK), Foresee (Hungary), Ulster University (Northern Ireland) and Victim Support (UK).

We were adamant that our results were produced not just in English, but in all participating country languages i.e. Greek, German, Dutch and Bulgarian. The victims and restorative justice literature is still very thin when it comes to non-English sources and thus we hoped to make material accessible by going the extra mile by making them accessible to local people.

After a thorough review of the extant literature and existing best practice, we produced over 20 reports sharing this information for free across Europe. Following this, we carried out fieldwork with over 272 victims and offenders and 280 professionals working with victims either by providing victim support, restorative justice or criminal justice services.

This gave us the evidence base to construct training material, manuals, best practice guidance and protocols. In total, 27 face-to-face pilots were carried out in the five participating countries reaching 1,131 individuals and 383 organisations. We also used this material to produce an online course for victims, which was downloaded 200 times. A separate e-course was also created for professionals. At the time of writing, this was downloaded 50 times and like the face-to-face course it received CPD accreditation (Continuing Professional Development). At the same time, we organised conferences and seminars and made various presentations at national and international conferences while meeting with our national and local decision makers.

The structure of this book was carefully considered bearing two objectives in mind. First, I wanted to explore and propose a new narrative for victim policy. To achieve this, I combined evidence from international guest papers (Part I) and the findings of the RJE project (Part II and III). Most of the guest articles are written by victims who had the courage to share their personal experiences. My experience and the evidence that we have gathered suggest that contrary to what many criminal justice professionals believe, victims do want to talk and be included in the formation of practices and policies that impact on them. I have always said that a true democracy is one that not only offers its citizens the opportunity to participate, but also supports them in doing so. As we become more honest about our intentions and available resources for criminal justice reforms, we must become more accountable whenever we choose not to include victims directly in policy making. Therefore, an obligation is created for national and European governments to respond to this call. Second, I wanted to offer a comparative and critical perspective of current evidence and emerging themes that will facilitate the implementation of this new narrative for victim policy including the Victims' Directive.

I hope that the knowledge that we produced through the programme and this book, as well as the tools that we made available will be used by professionals, decision makers and policy makers in their efforts for a better criminal justice system. Having set up IARS, a user-led international institute that aims to change policy and practice from the bottom up, it will not be suprising to read that my biggest hope is that individuals/ users are empowered through our work and the training that we produced to seek their rights under the new law. The victims and offenders whom we spoke feel that the existing gatekeepers, entrenched practices and mind-sets are the true barriers in the implementation of our proposed narrative for victim policy including the Victims' Directive. The practitioners and other experts who took part in our research also confirm this conclusion. While we foster an attitudinal change and a cultural shift within our criminal justice systems, we must allow the human rights values of Freedom, Respect, Equality and Dignity to guide us through our policy, institutional and legislative reforms.

I am proud to safely claim that the RJE project and this book went way beyond what we had

originally promised to the European Commission and it is to the credit of my team, our partners and guest authors. This would not have been possible without the participation of the victims and other users of the criminal justice system as well as the professionals who kindly gave their time. I am also grateful to the Independent Advisory Group that we set up in order to provide advice and scrutinise our direction.

I am particularly grateful to Ben Lyon (IARS' trainer), Grace Loseby (IARS' Justice Project Coordinator) and Andriana Ntziadima (IARS' Communications Manager). Special thanks go to IARS' Finance Manager, Hatixhe Demushi who very patiently kept track of our spent. Many thanks also go to the country project leads Professor Artinopoulou (Greece), Professor Hartmann (Germany), Dr. van Hoek (the Netherlands) and Professor Chankova (Bulgaria), and their respective research teams. Thanks also go to the UK Ministry of Justice which provided us with support letters that made our fieldwork easier and gave us access to various decision makers including relevant ministers and decision making bodies such as the National Restorative Justice Implementation Board, prisons and NOMS.

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Professor Theo Gavrielides

Foreword

Olivier Tell

The European Commission has made the protection and support of victims of crime a priority and is taking steps to ensure that their needs are met. Therefore, it is a great pleasure to write this Foreword for Theo Gavrielides' new book "A victim-led Criminal Justice System: Addressing the paradox".

As the title of the book suggests, we have been living a paradox in our modern criminal justice systems. Although justice and criminal justice are primarily meant to restore the power imbalance and hurt that are caused by crime, victims continue to be disempowered. At the European Union (EU) level, therefore, we have taken recent legislative action to rectify this paradox by creating a baseline of minimum safeguards and guarantees for victims across Europe.

The package of measures presented by the European Commission in May 2011 – and in particular the Directive 2012/029/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime (the "Victims' Directive") – will ensure that victims are treated appropriately and without discrimination. Our aim is to ensure that victims get access to justice though a range of rights that will allow them to actively participate in criminal proceedings, to access support and assistance services, to be protected from secondary and repeat victimisation, to be informed throughout the course of proceedings and to seek compensation and restoration. Meeting the needs of victims plays an important role in assuring victims' rights and achieving a high quality of justice in the European Union. It is crucial to acknowledge victims, to take their suffering seriously and to help them get on with their lives.

Once the transposition date of the Victims' Directive on 16 November 2015 has passed, EU Member States must implement at least the Directive's minimum standards. In our attempt to prepare Member States appropriately for the implementation of the Directive, we made funding available through a competitive and open process. One of the projects that we co-financed was the "Restorative Justice in Europe: Safeguarding Victims & Empowering Professionals" (RJE). This was run by the UK based international NGO Independent Academic Research Studies (IARS) in partnership with four other partners in Germany, the Netherlands, Greece and Bulgaria.

The appropriate treatment of victims is a demonstration of our societies' solidarity with each individual and recognition that such treatment is essential to the moral integrity of society. It is therefore crucial not only to combat and prevent crime, but also to properly support and protect individuals who do fall victim to crime. One of the primary concerns of the RJE project and this book is restorative justice. While we are still learning about the strengths and limitations of restorative justice, this book helps us to reflect on its implications for victims and their rights. One of the aims of the Victims' Directive is to ensure that restorative justice practices are delivered safely and in the interest of the victim. It is important that as we move forward with the implementation of the Directive that the concerns and wishes of victims and professionals are heard.

Therefore, I commend the RJE project and the authors of this book for including victims' voices in the construction of their scientific and practical results. I was particularly pleased to see chapters written by victims as well as material that aim to empower victims directly in pursuing their rights.

I want to congratulate the Editor, the authors and everyone who was involved in writing this book, which brings together the key finding from the project that we have co-financed. While it summarises the extant literature, it also provides new evidence on effective practice and key recommendations for the improvement of our criminal justice and restorative justice processes.

Olivier Tell is Head of Procedural Criminal Law, Directorate-General Justice, European Commission.

October 2014, Brussels.