

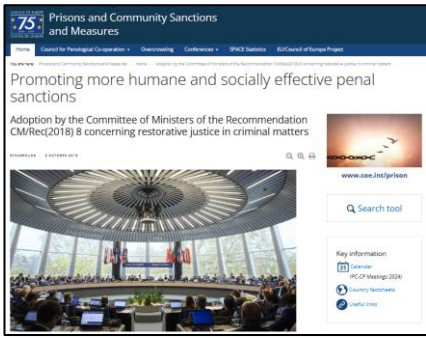
# The European legal framework and the implications for Nordic countries

Dr. Ian Marder

Associate Professor in Criminology, Maynooth University School of Law and Criminology

[ian.marder@mu.ie](mailto:ian.marder@mu.ie)

@iancriminology



# Dr. Ian Marder

Associate Professor, Maynooth University School of Law and Criminology (2018-), conducting applied research on restorative justice and restorative practices and supporting the development of policy and practice...



Scientific Expert, Council of Europe (2017-2018)  
Coordinator, *Restorative Justice: Strategies for Change* (2018-2024)  
Chair, Criminal justice Open Research Dialogue (CORD) (2024-)



As a criminologist, I want to say 'thank you' to the Nordic region...



... do you know why?

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... not because you're 'perfect' (although some of you are close)...



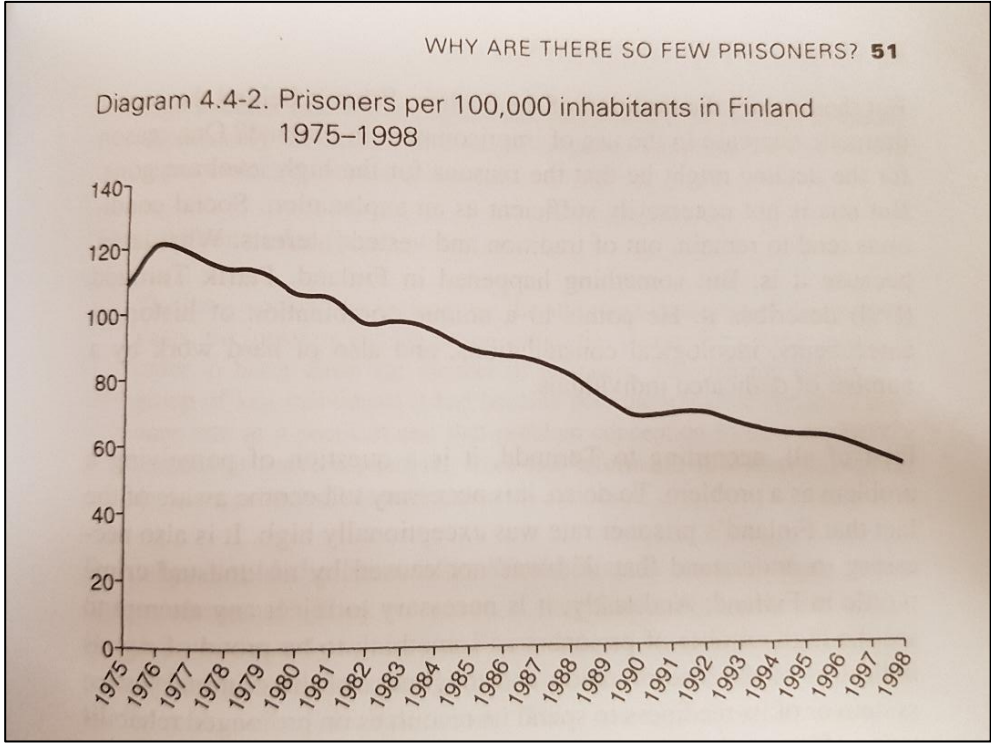
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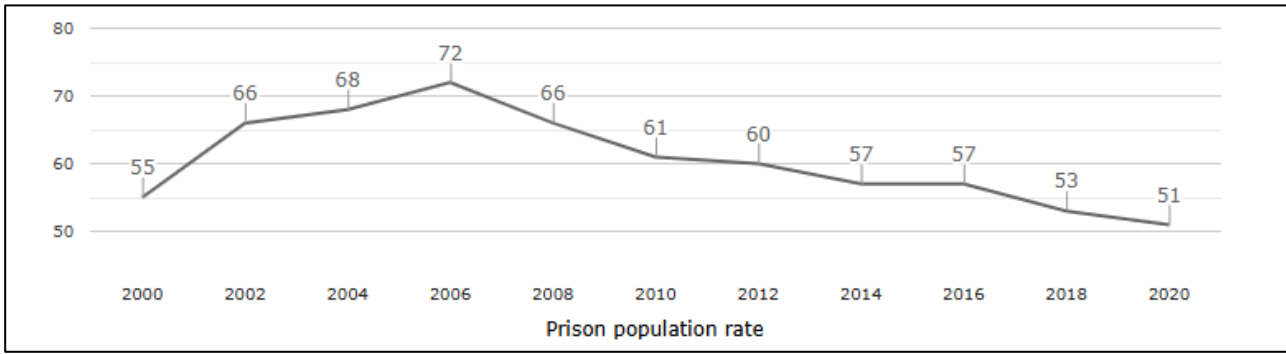
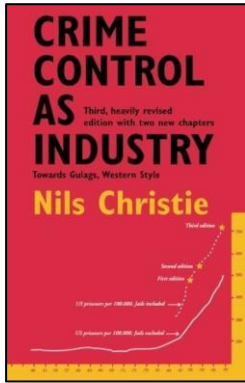


**...but because you show the rest of us that change can be done on purpose!**



‘Culturally, Finland is an important partner of ours, regarding the correctional system. Scandinavians have prison services that we look up to. They are a good example of what ours could be in the future.’

Priit Kama, Deputy Secretary General for Prisons, Estonia (2018)



‘Suomenlinna Prison is the jewel in the crown of Finland's penal system. [...] Minister for Justice Charlie Flanagan has said Ireland can learn from the Finns’ example.’

# Today's discussion

1. Messages from the European legal framework
2. Recent developments in restorative justice implementation and the implications for the Nordic countries

My assumption: we all have a shared interest in maximising **1)** the accessibility of restorative justice and **2)** the 'restorativeness' of criminal justice systems.

**In other words, we believe positive change can still be done on purpose.**

# Today's key messages

1. Taking restorative justice to the next level requires a new level of **inclusive collaboration** between organisations.
2. Everyone in criminal justice can help ensure citizens experience justice as restorative – we can all be '**agents of restoration**'.



# Messages from the European Legal Framework

# Question

Some Nordic countries have national restorative justice providers, that can use restorative justice at all stages of the justice process.

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Some Nordic countries have national restorative justice providers, that can use restorative justice at all stages of the justice process.

Why not **automatically refer all** criminal cases for assessment?

# Restorative justice as a human right

- Council of Europe (2018, 2021) discussed the idea of a right to access restorative justice.
- We conceptualised this further as a human right that derives from its ‘parent rights’, e.g., **the right to an effective remedy** (ECHR).
- A self-standing European Union Restorative Justice Directive can be a big step towards this. In the meantime, **we require a right to individual assessment**.



The screenshot shows the article page for "Conceptualising and assessing a human right to access restorative justice in European criminal law" in the New Journal of European Criminal Law. The page includes the journal title, logos for Eclan and ECBA, an impact factor of 0.6, and a journal homepage button. It also displays the article title, authors (Mart Susi and Ian D. Marder), publication date (March 17, 2025), and a DOI link. A navigation bar offers options for Contents, PDF/EPUB, Cite article, Share options, Information, rights and permissions, and Metrics and citations. The abstract text is visible below the navigation bar.

New Journal of European Criminal Law

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Conceptualising and assessing a human right to access restorative justice in European criminal law

Mart Susi and Ian D. Marder | View all authors and affiliations

OnlineFirst | https://doi.org/10.1177/20322844251325723 | View article versions

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Abstract

Restorative justice is a process, provided for in European criminal law, in which dialogue is facilitated between those affected by crime and those responsible for that crime. While the European Union and Council of Europe’s legal frameworks incorporate rights that relate to restorative justice, there has been very little academic or political consideration of the possibility that access to restorative justice should be a human right in itself. This article draws on conceptual frameworks outlining criteria by which a proposal for a new human right may be assessed, to consider whether restorative justice can rightfully be welcomed into the human rights family. We analyse relevant challenges and complexities inherent in restorative justice to conceptualise it as a human right, before using work by Susi, Alston and others to consider whether restorative justice meets the qualitative criteria for a human right, whether it can be said to derive from existing human rights, and how it can be conceptualised in a sufficiently universal and abstract way to be incorporated into European criminal law as a human right.

# Aims of 2018 Recommendation (Commentary, p.2)

- enhance the awareness, development and use of restorative justice;
- standards [and] a more balanced approach to the conceptualisation and development of restorative justice than is implied by the Victims' Directive;
- integrate a broader understanding of restorative justice and its principles into the (comparatively narrow) 1999 Recommendation;
- elaborate on the use of restorative justice by prison and probation services.

This Recommendation goes further than the 1999 Recommendation in calling for a broader shift in criminal justice across Europe towards a more restorative culture and approach within criminal justice systems.

# The 2018 Recommendation – key points

- **‘Generally available service’** (Rule 18), accessible ‘at all stages of the criminal justice process’ and for all crime types (Rules 6 & 19).
- **Dedicated coordination** by multi-agency partnerships (Rule 62) and individuals within agencies (Rule 63).
- **Practice standards** include neutral space (15), voluntariness (16) and confidentiality (17), underpinned by the autonomy of services (20).
- **Other applications** of restorative principles: inform other interventions (Rule 59), address harm beyond the criminal procedure (Rule 60), build relationships and a restorative culture in organisations (Rule 61).

# Council of Europe, post-2018 Recommendation

## Venice Declaration (2021) on the role of restorative justice in criminal matters

15. Invite the Council of Europe to encourage and assist its member States to:

i. Develop **national action plans** or policies, where necessary, for the implementation of [2018 Rec] by ensuring **inter-agency co-operation nationwide**, adequate national legislation and funding, while reflecting on the idea that **a right to access** to appropriate restorative justice services for all the interested parties, if they freely consent, should be a goal of the national authorities;

## Recommendation CM/Rec(2023)2 on rights, services and support for victims of crime

Article 18 – Restorative justice

1. Restorative justice should be a service that is generally available. Restorative justice services should have sufficient capacity to provide safe and effective services to all victims who may benefit. The type and seriousness of the offence, or its geographical location, should not in themselves, and in the absence of other considerations, preclude restorative justice from being offered. [...] This in particular concerns:

– ensuring that victims are given the **information and support** necessary to enable them to make a free and informed choice to participate in restorative justice and, where appropriate, to initiate restorative justice;

# Revising the VRD

## Article 21 - Right to access restorative justice services ([Commentary link](#))

- 1) Member States shall take measures to establish access to restorative justice services for all victims of a crime, at any stage of the criminal proceedings in co-ordination with the provision of support services.
- 3) Member States shall facilitate the referral of cases to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral.



EUROPEAN FORUM  
FOR RESTORATIVE JUSTICE  
Connecting People to Restore Just Relations

### European Forum for Restorative Justice<sup>1</sup>

Feedback to the European Commission proposed revision of the Victims' Rights Directive

#### ■ Proposal 1

Establishing a **right of access** to restorative justice services (option A, the strongest option); or, (as a less strong yet viable alternative to option A) defining **restorative justice as a generally available service for all victims** as per the CoE Recommendation CM/Rec(2018)8 on restorative justice (option B);

#### ■ Proposal 2

Regardless of whether Proposal 1, options A or B, is supported, we recommend **both**:

Enhancing the European Commission's proposed revisions **by incorporating restorative justice into relevant EC amendments** (First Component of Proposal 2), **and by amending certain existing articles on restorative justice** (Second Component of Proposal 2).



Victim Support  
Europe



Co-funded by  
the European Union

## VICTIMS OF CRIME MODEL PROVISIONS PAPER

VSE's vision for a revised victims' rights directive

# Revising the VRD



Brussels, 12.7.2023  
COM(2023) 424 final  
2023/0250 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA**

{SEC(2023) 270 final} - {SWD(2023) 246 final} - {SWD(2023) 247 final}

*'Article 26a*

## **Protocols through national coordination and cooperation**

1. Member States shall establish and implement specific protocols on the organisation of services and actions under this Directive by the competent authorities and other persons coming in contact with victims. The protocols shall be drawn up in coordination and cooperation between law enforcement, prosecution authorities, judges, detention authorities, restorative justice services and victim support services. The specific protocols shall aim as a minimum at ensuring that:
  - (a) victims receive information that is adapted to their changing individual needs; whereas such information shall be simple and easy to understand, provided in a timely manner, repeated over time, in multiple formats including orally, in writing and digitally;
  - (b) victims who are in detention including jails, detention centres and holding cells for suspects and accused, as well as specialised detention facilities for applicants of international protection and pre-removal centres or in other institutions, including accommodation centers where applicants and beneficiaries of international protection are located:
    - (i) receive the information about their rights;
    - (ii) can rely on facilitated crime reporting;
    - (iii) have access to support and protection in accordance with their individual needs;
  - (c) individual assessment of victims' needs for support and protection as referred to in Article 22, and provision of support services for victims with specific needs, take into account the victims' individual needs at different stages of the criminal procedure.
2. Member States shall ensure that the protocols referred to in paragraph 1 are reviewed at regular intervals to ensure their effectiveness, and at least once every two years.
3. Member States shall take the necessary legislative measures to allow for collection and sharing of information, including information containing personal data of victims between the competent authorities and victim support services to ensure access to information and appropriate support and protection of individual victims.

# Revising the VRD – the reality

<i>Present Text</i>	<i>Amendment</i>
<b>Right to safeguards in the context of restorative justice services</b>	<i>(6c) The title of Article 12 should be changed into:</i>
	<b>Right to access restorative justice services</b>

Committee on Civil Liberties, Justice and Home Affairs  
Committee on Women's Rights and Gender Equality

- Despite MEPs proposing more radical change, the Council of the European Union response to the European Commission watered down the proposed Article 26a further.
- Still, the ‘Protocol’ provision is likely to be passed in some form.
- EU Victims’ Strategy to 2030 the next opportunity to foreground RJ.
- Consider engaging with the EFRJ Policy Network to contribute.

Giustizia riparativa,  
per Marta Cartabia  
può diventare un  
pilastro

© 14 marzo 2022



# Recent developments in restorative justice implementation in Europe

# Question

Who are all the different groups of professionals whose support is important to implement restorative justice in your countries?

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Who are all the different groups of professionals whose support is important to implement restorative justice in your countries?

**Are they present today? Are they usually present when you are having those discussions?**

# Restorative Justice: Strategies for Change (2019-24)

10 countries: Albania, Belgium, Czech Republic, Estonia, Italy, the Netherlands, Poland, Portugal, Republic of Ireland and Scotland

Core Members → Stakeholder Groups → National Strategies



Project review (*Marder, Weiner, Matczak, Kirkwood & Slump, under review*), drawing on data including a post-project survey of partners (n=25) and annual country reports (n=39), asked:

1. To what extent and in what ways, if at all, did the project enable change?
2. Where and when the project did enable change, how (by which mechanisms) did it work and what conditions were present that meant the project could enable change?
3. What are the implications for the development of restorative justice?

# Lessons from RJS4C evaluation



## **Our direct engagement** involving policymakers, criminal justice agencies, researchers, RJ services and advocates...

- Helped researchers, RJ services and advocates understand the dynamics in which policymakers work and the opportunities to frame policies, influence priorities or act on 'policy windows' when problems, policies and politics align.
- Helped coordinate a range of professionals who are needed for RJ development, and in whose work opportunities for restorative principles can emerge.
- Built a 'community of practice' on RJ implementation to help 'cross' and 'bridge' boundaries between people whose (individual and organisational) collaboration and input are needed (Wenger et al., 2002; Carroll and Crawford, 2024).

# VICINFO

Enabling VICtim access to restorative justice through INFOrmation sharing



**Restorative justice accessibility** (as opposed to **availability**) requires victims to receive both ‘information and support’ (Council of Europe, 2023) to make an informed decision on whether the process is right for them.

Services that would provide restorative justice must be able to contact victims **automatically (without a gatekeeper)** to offer an individual assessment.

Some countries do not share information, or interpret data protection, in a way that allows this. We’re exploring how **information sharing** can facilitate, rather than inhibit, RJ accessibility and delivery.

# Wider applications of restorative practices

## *Family Matters Programme*

### **What is the Families Matters Programme?**

This is a new programme for men in Shelton Abbey who are preparing for release and return home. It offers support to you and your family as you all get ready for leaving Shelton because we know that, whilst this is a happy time, it can also be difficult as everyone gets used to being together again.

## RESTORATIVE PRACTICES TRAINING FOR SENIOR LEADERS IN THE IRISH PRISON SERVICE FINAL RESEARCH REPORT

DR. IAN D. MARDER, TRIONA KENNY AND KATHARINA KURZ  
MAYNOOTH UNIVERSITY SCHOOL OF LAW AND CRIMINOLOGY



## Embedding a Culture of Interdisciplinary Open Research in Criminal Justice: A New Partnership for Ireland

Ian D. Marder, Patrice McCormack, Threase Finnegan-Kessie, Jennifer Schweppe, Lynsey Black, Fionnuala Brennan, Triona Kenny, Katharina Kurz, Emeline Le Prince, Marian Quinn, Ruairi Weiner, Yvonne Daly, Darragh McCashin, Kevin Wozniak, Colette Barry, Ciara Bracken-Roche, Avril Brandon, Sophia Carey, Maria Cleary, Geraldine Cleere, Megan Coghlan, Catherine Comiskey, Alan Cusack, Karl Ducque, Niamh Flanagan, Joe Garrihy, Diarmuid Griffin, Ciara Guiney, Helen Hall, Amanda Haynes, Deirdre Healy, Nicola Hughes, Frank Humphreys, Sharron Kelliher, Enda Kelly, Dympna Kenny, Noreen Lacey, Susan Leahy, Aidan McCarthy, Niamh McCormack, Lucy Michael, John F. Morrison, Ciara O'Connell, Lauren O'Connell, Liam O'Driscoll, Rioghnach O'Leary, Johanna O'Shea, Barry Owens, Katie Prendergast, Michele Puckhaber, Orlaith Rice, PJ Ryan, Shirley Scott, Katharina Swirak, Mark Toland, Trevor Vaughn, Fiona Walsh and Tobias Winright\*



# Implications for the Nordic countries

- Find a suitable structure to **engage with everyone to develop an action plan** on implementation. Don't be afraid to cast your net wide, from the frontline of research, practice and advocacy, to the highest levels of policymaking!
- Find new ways to **automate information sharing and/or referrals** to remove gatekeeping from the process of identifying suitable cases – make it a right!
- Much to **learn from elsewhere**, especially on processes by which restorative justice is implemented, and new applications of restorative principles.
- Consider **proactive applications**, beyond restorative justice. If you want to use restorative principles and processes in interesting ways, the **European legal framework** probably supports it! There is always a route to progress...
- Continue **helping and showcasing** the best of yourselves to the rest of us!