

## The Restorative Justice System - An Alternative to the Official Criminal System

Monica POCORA<sup>1</sup>

**Abstract:** The victims' discontent regarding the retributive justice system, the failure to achieve the punishment's goal aiming to decrease the risk to repeat the offence, the increasing role of the victim in the criminal trial, the high cost that the criminal procedures imply, the courts' overload have determined the evolution of the restorative justice ideas. Therefore, the victim received an active role in the process of solving the conflicts submitted to the court, while the offender's role is to assume the responsibility and to repair the harm he caused. While the classic justice system is based on the idea that any felony brings harm to the state itself, the restorative justice model is based on the idea that any offence is firstly a conflict between individuals, causing damage and harm to the victim, to the community, and to the offender himself.

**Keywords:** alternative, early prevention, damage repair, restitution

### 1. Introduction

The restorative justice concept has various meanings, thus it can be considered even an umbrella-concept, covering many practices, models and programs.

The restorative justice is frequently perceived as a return to the traditional practices, but sometimes is considered to be a new structure, a viable strategy which may contribute to modern justice system improvement. Within the retributive criminal trial, applying a sentence, a penalty, does not mean that the offender is aware of the harm he produced, nor does he assume the responsibility for his crime.

Considering the need to identify some adequate answers to prevent and control the crime, some countries have looked for adequate solutions to reduce it. A possible

---

<sup>1</sup> Senior Lecturer, PhD, "Danubius" University of Galati, Romania. Address: 3 Galati Boulevard, 800654 Galati, Romania. Tel.: +40.372.361.102, fax: +40.372.361.290. Corresponding author: monicapocora@univ-danubius.ro.

answer came from the introduction in some states' law systems of the restorative justice concept, as an alternate way to solve conflicts.

The restorative justice reassertion has been proved by the increasing number of the restorative justice programs in various countries. Therefore, this program became an integrating component of those systems (in Romania for instance, the unpaid community work does not have its own legal provision, but it is governed a supervision obligation – see the Romanian Penal Code, art. 103 (3)). In other countries, the restorative justice system has already gained a position as an alternative to the official criminal system.

The retributive justice system follows the concept according to which the most important part of the justice act is to establish the offender's guilt and to punish him according to the seriousness of his crime, to the damage brought to the victim and community. The illicit act is a violation of a legal and social standard, thus being directed against the state.

The restorative justice is based on the traditional concept which states that those who victimize someone must accept the responsibility of his doing, re-establish the balance, and cover the losses or damage he brought to his victim and to whole community. The greatest attention is given to the type of the affected social relations, and to what must be done in order to repair them.

The restorative justice aims to heal the affective wounds and to compensate the damage. The punishment as element of the retributive justice system is translated here as the offender's work to realize that he broke the social standard, by assuming the accountability for his act. Unlike the retributive justice, where the offender's punishment and isolation are emphasized, through the penalty regarding the deprivation of liberty or the restrictive and educational measures, the restorative justice suggests to identify the ways to reinstate and harmoniously reintegrate the offender into the community. This type of justice focuses on the damage repair and restitution by the offender, so that he might assume the responsibility for his crime. It emphasizes the increasing role of the victim and the community members, making the offender accountable, repairing the material and affective damage suffered by the victim, and offering new opportunities for discussion, negotiation and solving the conflict.

## 2. Restorative Justice – Mandatory Characters

The discussion above suggests that the restorative justice bases itself on **responsibility, self-involvement, straightness, community view, damage repair, avoiding the discrimination, restitution** and **early prevention**. These concepts, which define the restorative justice, emphasize the functionality principles of this institution, namely:

- the crime is a interpersonal conflict, which affects the victim, the community, and even the offender;
- the restorative justice implies a free-content agreement regarding the nature, the amount of the damage, and the way to repair it;
- the restorative justice system allows to victim, to offender and to community to take part to the procedures, at the expense of the role of the state authority.

Through its implementation procedure, the restorative justice guarantees the repair of the damage caused to the victim, as the offender contact to the community. This contact allows him to see the consequences of his acts through the view of those who affected. Putting him face to face to his victim (both directly and indirectly – the family members, for instance) is a real social therapy, which awakes the sense of accountability.

On the other hand, it's precisely this conflict victim-offender which gave birth to a sum of judgments, including the questioning of its effectiveness, by comparison to the retributive system. Also, it has been considered that the victim-offender relation might lead the offender to acknowledge his mistake and to assume the responsibility only superficially, trying to avoid the impact of the severe legal provisions. Moreover, although the offender expressed his willing to participate to a restorative justice program, he might actually try to expose his own motivation leading him to perpetrate. This situation might lead to a secondary victimization of the victim. Last but not least, there are other objections regarding the lack of balance between the penalty and the gravity of the crime, and the fact that these restorative practices do not intimidate the offender. For instance, in some cases – severe crimes as rape – the restorative justice can't repair almost anything, as the victim continues dealing with negative feelings as fear, depression and anxiety.

One of the restorative justice definitions that has become largely known in comparison to the others was stated by *Tony Marshall* (1997). It has been adopted

as a work instrument for the *10th UN Congress Resolution for the Crime Prevention and Criminal Justice System* (Vienna, 2000), and it states the following: “*The restorative justice represent an approach to solve the problems that crime started, by involving all those affected by it, and with an active participation of the state organisms who are responsible of dealing the crime*”. Marshall thinks that the restorative justice is not a practice, but a set of principles which might guide the groups dealing with crime practices (Marshall, 2001). The restorative justice has the following main targets:

- to answer to any need – financial, emotional or social – the victim might have (both directly and indirectly, including the persons close to the victim, which might be also affected), need which has a causality relation with the crime;
- to seek to reinstate the offender in the community, thus preventing the relapse;
- to determine the offender to assume responsibility for his acts;
- to reduce the costs generated by the traditional justice system, to avoid overloading the courts, and to guarantee swiftness to the process.

John Braithwaite specifies that the purpose of the restorative justice is to involve the victim, the offender, and largely all the community members in the process of restoring the affected social relations. He calls this process *the reinstatement ceremony* (Braithwaite, 2001). He also considers that we can't speak of restorative justice if the material restitution of the damage caused to victim, the emotional and affective recovery, and the restore of his feelings of security, dignity and self-esteem are not accomplished. But the reinstatement of the offender into community is equally important. Does the retributive justice system ensure the offender's reintegration into community?

*Daniel van Ness* defines the restorative justice as a “*justice theory, focused on repairing the harm produced or revealed by the criminal behaviour; the best way to accomplish it is through cooperation and involvement processes*” (Van Ness, & Heetderks, 1997).

In Howard Zehr and Harry Mika opinion, “*the restorative justice tries to heal and to repair the harm brought to the victim*”. The crime appears as a “*damage produced to people and personal relations, which creates obligations and responsibilities*” (Zehr, 2002).

Also, the restorative justice is considered as “*a social and political authority offering an alternate resolution for conflicts, focused on restoring the micro-social relations affected by this conflict, through some participative practices, and some concepts and values meant to enlarge the tolerance into the pluralist micro-social area*” (Mika, 1992).

The common feature of the various definitions developed for the restorative justice concept is the fact that the restorative justice relies on programs following the reconciliation between victim and offender and the search of adequate solutions, in order to repair the damage the crime produced. The restorative justice suggests a change of view as against the classical justice system, starting from the idea of a participative approach in resolving the conflict and repairing the damage. The new criminal philosophy starts from the idea that all the parties should be involved to the response to crime: the victim, the offender and the community. Inside this criminal philosophy, the responsibility is based on the offender’s acknowledgement of the harm he produced, on the accountability acceptance, and on the repair of the damage produced. This system encourages the direct involvement from the victim and the offender to resolve the conflict, through discussion and negotiation, in the presence and assisted by a third party (Redekop, 2008).

### **3. Conclusions**

Therefore, one of the features of the restorative justice concept resides precisely in the idea to encourage both the victim and the offender to involve themselves directly into the conflict settlement, through dialogue and negotiation. Although there are a number of different practices, depending on the country and the law provisions, all the restorative justice programs are based on the victim-offender mediation. Whether they are called mediation or reconciliation, whether they are imposed or not to the offenders, whether they conclude or not with an agreement or a contract between the two parties, the action taken to this end forms the content of the restorative justice notion.

#### 4. Acknowledgment

This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013.

#### 5. References

- Ashworth A., Redmayne M. (2005). *The criminal process, Third Edition*. Oxford: Oxford University Press.
- Braithwaite, J. (2001). *Restorative Justice and Responsive Regulation*. New York: Oxford University Press.
- Modiga, Georgeta; Tureac, Cornelia & Filip, Alin Constantin (2011). *Instrumente juridice în materia asistenței judiciare/Legal instruments in legal assistance matter*. 8th Circle Conference 2011 – Dubrovnik – Croatia.
- Marshall, C.D. (2001). *Beyond Retribution: A New Testament Vision for Justice, Crime, and Punishment*. Grand Rapids: Eerdmans.
- Mika, H. (1992). *Mediation Interventions and Restorative Justice: Responding to the Astructural Bias*. Dordrecht: Kluwer.
- Redekop, P. (2008). *Changing Paradigms: Punishment and Restorative Discipline*. Waterloo: PA: Herald Press.
- Van Ness, Daniel, Karen Heetderks. (1997). *Restoring Justice*. Cincinnati: OH: Anderson Pub.
- Vlad, C. (2009). *Reconciliation*. Bucharest: The Institute of Romanian Revolution.
- Zehr, H. (2002). *Little Book of Restorative Justice*. Philadelphia: Good Books.