

# Restorative justice – the new paradigm of criminal justice? Genesis of Restorative Justice theory. Basics

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# Clarification of terminology

- Restorative justice – a phrase, difficult to translate
- Literal translation - “възстановително правосъдие“
- A term, accepted in the theory, legislation and practice

# Restorative Justice

- best reveals the leading nature of this kind of justice - namely, the restoration of damage caused by the crime, the existing connections and relationships, the status quo as a whole, balance and tranquility in society

# Restorative Justice

- it is the broad content embedded in this concept that is taken into account, namely, the activity of the court, the prosecution and pre-trial bodies and the bodies which enforce and implement courts' judgments and decisions

# Origin of RJ theory

- Howard Zehr - RJ is a model/paradigm of alternative justice that opposes repressive criminal justice
- Nils Christie – the conflict should “go back” to its "owner"

# Origin of RJ theory

- The contribution of the abolitionists
- The contribution of the movements supporting victims
- Martin Wright's contribution - changing criminal justice with civil justice
- John Braithwaite's contribution - the theory of reintegrating shame

# Definition of RJ

- multiple definitions
- conventional definition: Restorative Justice / Restorative justice / is the process by which the parties relating to a crime jointly decide how to deal with its consequences and its impact on future

# Main points

- A special place of and attention to victims
- Focus on the offender, too
- The society is immediately involved in solving the problems resulting from a crime
- The court and prosecution are not excluded from the process of restorative justice

# Analysis

- At present, globally, punishment is a typical, basic tool for responding to crimes.
- Penalty is not and can not be the only possible response to committing a crime.

# Analysis

- There is a trend of diversification and enrichment of methods of modern criminal-law impact in the fight against crime.
- The theory of “the two tracks”, “the two ways”, two two options to respond to crime.
- The main duty of the state is to respond, and the question of how to react is another issue.

# Main starting points of RJ theory

- Globally, the current criminal justice system is not working.
- Crime has its origins in society; it is primarily a breach of human relations and then an offence of the law.
- The immediate victims of the crime are the persons directly affected by its effect, but the secondary victims are family members, friends and society as a whole.
- The personal involvement of the affected sides is essential for the successful solution of the problems arising from crime.

# Main starting points of RJ theory

- It is possible that the perpetrator might change for the better, learn new ways of behavior in society (particularly true for young offenders).
- Justice should be applied flexibly so as to correspond to the specifics of each case.
- Cooperation, cooperative methods are generally more efficient than coercion.
- Crime prevention is directly dependent not only on the participation of society, but also on the efforts of the state and its institutions.

# Main principles of Restorative Justice

- personal involvement of those directly affected by crime
- examination of the crime, its causes and consequences primarily in a social context
- inclusion of the public in this process
- focusing on the future

# Operational principles of Restorative Justice

- voluntary contribution to the mechanisms of this kind of justice
- impartiality of the persons assisting parties to resolve issues arising from crime
- confidentiality of procedure
- flexibility, etc.

# Classic criminal justice compared to Restorative Justice

| Classic criminal justice                                                          | Restorative justice                                                                           |
|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| Crime is defined as an act against the State.                                     | Crime is defined as an act against the person and the society.                                |
| Crime is considered primarily in the limits of legislation.                       | Crime is considered in all its aspects - social, economic, emotional                          |
| The focus is on the prosecution of the act, i.e. on the past (what has been done) | The focus is on solving problems arising from the crime, i.e. the future (what is to be done) |

# Classic criminal justice compared to Restorative Justice

|                                                                                          |                                                                     |
|------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| Relations based on opposition                                                            | Dialogue, negotiation                                               |
| Stimulating competition, individualistic values                                          | Stimulating reciprocity                                             |
| Active role of the state, peripheral role of the victim, passive role of the perpetrator | Active role of the victim and the perpetrator, control of the state |
| Society is excluded                                                                      | Society is involved                                                 |

# Classic criminal justice compared to Restorative Justice

|                                                                  |                                                                           |
|------------------------------------------------------------------|---------------------------------------------------------------------------|
| It relies mostly on authorized professionals.                    | It relies mostly on direct involvement of the victim and the perpetrator. |
| Imposition of punishment as a means of detention and prevention. | Measures of recovery of both sides and reconciliation.                    |
| The stigma of crime is inevitable.                               | The stigma of crime can be avoided.                                       |

# RJ objectives

- To respond to the needs of the victim - physical, emotional and social
- To help the offender to realize their responsibility for what they had done
- To have a reforming impact and preventive effect on the perpetrator through his reintegration into society
- To have a therapeutic effect on the relationship between victim and perpetrator

# Key values of RJ

- mutual respect
- recognition
- openness
- patience
- sensitivity
- empathy
- authorization
- coherence
- responsibility
- encouragement
- sharing ideas
- significance of the feelings, needs and rights
- readiness to listen to each other

# Main aspects of RJ

- moralizing aspect
- treating aspect
- authorizing aspect
- transformative aspect

# Infrastructure of RJ

- international and national NGOs
- structures within intergovernmental organizations
- scientific projects
- pilot projects
- university courses
- Summer schools for practitioners
- Conferences, congresses, etc.

# RJ – a closer look at:

- penal science
- theory of conflict resolution
- criminal justice theory and
- criminology

# Restorative Justice

- A new paradigm of criminal justice?
- An alternative to traditional justice?
- An addition to, expansion of the existing justice?

# Application of RJ

- United States
- Canada
- Australia
- New Zealand
- A number of countries in Asia, Africa and Latin America

# Application of RJ in Europe

- EU member states: Austria, Belgium, Germany, Greece, Ireland, Spain, Italy, Luxembourg, Poland, Portugal, Romania, Slovenia, Hungary, Finland, France, Netherlands, Croatia, Czech Republic, Sweden, etc.
- Other countries: Norway, Switzerland, Albania, Moldova, Serbia, Turkey, Ukraine, etc.

# Application of RJ in Bulgaria

- Article 3, Paragraph 2 of the Law on Mediation (2004) states that mediation is conducted in the cases provided for in the Penal Code (PC).
- PC (2005) did not settle cases involving mediation and still does not.
- Public opinion polls show that mediation in criminal cases as the main tool of RJ a option well accepted by both professionals and society.

# Application of RJ in Bulgaria

- National Strategy for Assistance and Compensation to Victims of Crime 2006 - enabling victims to participate in the mediation in criminal proceedings.
- Strategy for continued reform of the judiciary in terms of EU membership 2010 - creating a comprehensive system of alternative dispute resolution was identified as a priority.
- Strategy for Reform of the judiciary 2014 –put RJ high up on the agenda, especially with regard to minors.

# Application of RJ in Bulgaria

- would provide adequate protection of the rights and interests of victims
- would contribute to rehabilitation and reintegration of offenders and particularly minors
- would increase the possibilities for reaction accounting the particular case
- would disburden the bodies of criminal proceedings

# Main bibliography on RJ

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# Instead of conclusion

- Restorative justice has been a priority topic for authors of the penal policy for decades now.
- It engages the attention of both international and national institutions, scientists and NGOs
- Accepting the legislative regulation of RJ in Bulgaria would meet the expectations of society and would also approach our criminal justice system to European standards.

■ Thank you for your time!