

Restorative Justice

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Abstract: Restorative justice makes its presence felt more and more in world legislation, but also in national legislation. Worldwide, it is characterized by a strong development, which makes it increasingly accepted in practice.

It is a justice full of understanding, which is concerned with the needs of the victims of the crime.

Supporters of restorative justice have in mind the observance of a set of values, which we also find in Romanian legislation, at the institution of mediation.

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Introduction

Restorative justice represents another way of resolving disputes without resorting to the standard judicial procedure and is a participative method of conflict resolution, giving the perpetrator the opportunity to be aware of the consequences of his act and to take responsibility for them, and at the same time offering support to the injured person for overcoming the trauma suffered.

Unlike restorative justice, which emphasizes the punishment of criminals, restorative justice aims at restoring the well-being of the injured person - who also has the right to be a civil party and who can demand recovery of the damage and society, and assumes:

- The involvement of those who are most (involved) affected by the commission of the act, namely the offender and the victim;
- Making a decision by mutual agreement;
- Using a person to facilitate communication;
- Holding the offender accountable for his actions, but also compensating the victim by the perpetrator.

Types of restorative justice

In different judicial systems there are different discussion models. When minors also participated in the antisocial acts (when they were committed), these discussions have certain particularities - for example: there are group discussions with families, discussions between family members, reprimand discussions, all of them have the objective, but also the purpose of holding them accountable the community.

When we talk about restorative justice in the form of discussions in the community, we have to take into account the possibility of the participation of the perpetrator and it appears that the importance of the family, the injured person, as well as the community is emphasized.

We find that this approach is a justice full of understanding, which has in the center of attention the concern for the needs of the victims (injured persons) of the crime.

It is well known that the victims of crimes are left on the back burner, both in their theoretical approach and in the concern for physical, moral or material recovery.

The quality of the passive subject of the crime "allows" this positioning, with which we have become somewhat accustomed.

The methods used in reparative or restorative justice are from certain points of view close to the content of the institutions - "reconciliation" (art. 159 C.P.) or "withdrawal of the previous complaint" (art. 158 C.P.; Ilie, 2019; High Court of Cassation and Justice - The Complete for the Resolution of Criminal Legal Matters, 2015).

The use of any of the two institutions leads to the removal of the punishment for the participants in the commission of the act.

In restorative justice, the focus is on the victim - on her interest, on the valorization of her rights - and not on punishing the perpetrators, trying to avoid public blame for those who produced the socially dangerous result.

In a restorative justice process, the people involved collectively resolve how to deal with the consequences of the crime and its future implications. Victims play an active role in this process, while "offenders" are encouraged to take responsibility for their actions and make amends for the harm they have done. This can be done by apologizing, returning the stolen item, providing a service to the community, etc. Restorative justice also provides help to "criminals" to prevent future crimes. It is based on a theory of justice that considers crime as a crime against an individual or a community, rather than as a crime against the state and its norms. By encouraging the dialogue between the victim and the "offenders", the practice of restorative justice achieves a high degree of satisfaction among the victims, as well as the fact that the "offenders" assume their responsibilities (Restorative justice, 2022; Vintila Viorel Law Office, n.d.).

John Braithwaite believes that restorative justice is "a process in which all people affected by an injustice have the opportunity to discuss how they were affected and decide what needs to be done to repair the harm. "Because crime causes harm, in a process of restorative justice, we were trying to heal justice. Therefore, at the center of the process were the conversations between those who were injured and those who caused the harm" (Braithwaite, 2004).

The views of some of the supporters of restorative justice (Van Ness et al., 2022) highlight a set of its fundamental values, which refer to encounter, reparations, reintegration and participation or inclusion.

Some of the values mentioned can also be found in the mediation activity, mediation representing the procedure that litigants can use in certain situations expressly provided by law (and in the case of certain crimes, with a low degree of social danger).

Hello, Law no. 192/2006 on mediation and the organization of the mediator profession, updated 2020, provides in the content of art. 1 as this "represents a way of resolving conflicts amicably, with the help of a specialized

third person as a mediator, under conditions of neutrality, impartiality, confidentiality and with the liberal consent of the parties.

The provisions of art. 1 and 2, provide that the mediation benefits from the trust that the parties give to the mediator, who becomes the person capable of "regulating" the disagreements and helping to proceed with the negotiations and ultimately to resolve the conflict, obtaining a mutually beneficial solution for both part.

Mediation came as an "emergency" solution, to help, which can be approached by the parties, natural or legal persons, who can resolve their conflicts of any nature with the help of the levers that mediation has, even if the process is in the trial phase.

Even if the legislator created the possibility of a "restorative justice" with the help of the institution of mediation, the legal provisions provide that strictly personal rights cannot be the subject of mediation, such as the rights regarding the status of the person, as well as other rights that the parties cannot dispose of by convention.

The 2nd section of chapter 6 of this law provides the special provisions regarding mediation in criminal cases 67-70.

Therefore, we find a form of manifestation of restorative justice in this possibility of application and in criminal cases, both in the criminal side and in the civil side. The provisions contained in art. 67, paragraph 2 provide that with regard to the criminal side of the process, mediation can only be applied in cases involving crimes for which, according to the law, the withdrawal of the prior complaint or the reconciliation of the parties removes the criminal responsibility, if the author has admitted the act before the authorities judicial or, in the case provided for in art. 69 before the mediator.

Art. 69 provides that when the mediation procedure is carried out before the start of the criminal trial and it is closed by resolving the conflict and concluding an agreement according to art. 56, para. 1, lit. a, by derogation from the provisions of art. 157, paragraph 3 of the Criminal Code, the act will not attract criminal liability for the perpetrator regarding which the conflict was ended through mediation.

We find that the fundamental values of Van Ness and Strong do not differ in terms of content from the provisions of Law 192/2006, which I mentioned.

The analysis of the mentioned fundamental values allows us to affirm that the entire mediation procedure follows step by step the "meeting moment", through the separate and mixed sessions, through the cooperation of the parties, through the involvement of the parties who can respond to the mediation invitation, through the modification of the dates of the mediation

sessions and last but not least by concluding the "mediation agreement", mediation involves the cooperation of the parties, the use by the mediator of specific methods and techniques, which are based on communication and negotiation, without the possibility of imposing a solution on the parties the conflict subject to mediation.

Conclusions

The restorative nature of justice is also found in the statements made during mediation by those who participate in this procedure (parties, mediator, lawyers, other persons required by law), statements that must keep their confidential nature vis-à-vis all those who are outside the procedure without the possibility of being used as evidence, only with the consent of the parties or when the law provides otherwise. Restorative justice approaches seek to repair the harm caused by a crime, rather than harming the offender.

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Restorative justice programs can offer perpetrators the opportunity to take responsibility for the crime, to repair the damage caused to the victim by committing the crime, to apologize publicly, to restore the relationship with the injured person, if necessary (Littell & White, 2018).

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