

RESTORATIVE JUSTICE AND YOUNG OFFENDERS

Sorina-Mihaela Bălan^{1,*}, Camelia Stanciu¹, Angela Cotoară²

¹“Dimitrie Cantemir” University from Targu Mureș, ²Professional Foundation, Targu Mureș, Romania

Abstract: In the last few years, significant progress has been made in the field of restorative justice by international and European instruments. Restorative justice aims to bring justice closer to people and considers participation as a fundamental, binding human value to people instead of separating them. Restorative justice focuses on what people perceive as a just, fair, and safe experience following a crime or conflict, through the European Mediarej project, specialists from four countries (Croatia, Italy, Romania, Spain), developed and implemented useful tools for restorative justice, the methodology consisted of focus groups and interviews with the targeted target group, young people.

Keywords: restorative justice, training, mediation, restorative justice instruments.

WHAT IS RESTORATIVE JUSTICE (RJ)?

Restorative justice is an approach to justice that is reparative – as much as possible – of the damage caused by a crime and/or conflict. An essential element of Restorative Justice (RJ) is the active participation of the parties involved, namely victims, criminals, and, as appropriate, members of the community, who come together voluntarily with the help of a facilitator to talk about the harm and its consequences and to identify the means to repair the evil [1]. Restorative justice offers a distinct approach for responding to moral harm. Its core values emphasis voluntariness, safety, inclusion, dignity, respect, responsibility, accountability, truth-telling and honesty. It focuses on addressing harm, offering people who have committed or been harmed by crime the opportunity to safely discuss the nature and consequences of the offense ask questions and offer answers, and agree what ought to be done to make amends and avoid further harm [2].

A brief history at International restorative justice instruments

Restorative justice has historic roots that can be traced in most societies prior to the development of modern criminal justice systems. It continues to be practiced through indigenous and customary approaches to justice and conflict resolution. Restorative justice processes can be adapted to various

cultural contexts and the varying needs of different communities [3]. Many European countries have seen significant growth in the awareness, development and use of restorative justice within their criminal justice systems [4]. Significant progress has been made in the field of restorative justice by international and European instruments:

- 1999, the Council of Europe adopted Recommendation No. R (99) 19 of the Committee of Ministers to member States concerning mediation in penal matters.

- 2002, the UN adopted the Basic Principles on the use of restorative justice programmes in criminal matters and in 2006 the first edition of the Handbook on Restorative Justice Programmes was published.

- 2007, the European Commission for the Efficiency of Justice (CEPEJ) argued that, within many member States, there remained a general lack of awareness of restorative justice, a lack of availability of restorative justice at some stages of the criminal justice process and a lack of specialized training in its delivery.

- 2012, the EU Victims Directive 2012/29/EU has provided a more solid position for the use of restorative justice with victims. Even if the EU Victims Directive does not argue for a right to access RJ, it proposes it as a service for victims which must be given with high-quality standards to protect and support them.

- 2016, the European Committee on Crime

*Correspondence to: Sorina-Mihaela Bălan, “Dimitrie Cantemir” University, Targu Mureș, Romania, E-mail: bsorinamihaela@yahoo.com

Problems (CDPC), a body within the Council of Europe, asked its subordinate body, the Council for Penological Co-operation (PC-CP), to explore whether the 1999 Recommendation should be revised.

- 2018, the Council of Europe Recommendation CM/Rec (2018) 8 concerning RJ in criminal matters reflects new developments in the field and calls for access to RJ to all cases and at all stages of criminal procedures and for the promotion of a restorative culture within the criminal justice system [5].

- 2020, the United Nations Office on Drugs and Crime (UNODC) released the second edition of the Handbook integrating more recent developments from the field.

WHAT IS THE PURPOSE OF RESTORATIVE JUSTICE?

The values guiding RJ practice promoted by Principles and Guidelines for RJ Practice in Criminal Matters are Reparation; Respect; Voluntariness; Inclusion; Empowerment; Safety; Accountability and Transformation. [6]. The goal of RJ is to create a safe space for sharing feelings (e.g. fear, anger, sadness) that arose as a result of the crime or a conflict and to talk about possible solutions to repair the damage. RJ is forward-looking: its objective is not to identify the punishment suited in proportion to the crime, pain, and suffering, but to regard the evil and suffering as the starting point of a shared story. RJ has as aims to give voice to all individual stories and truths to identify the points for understanding, sharing, and repairing harm and allowing parties to co-construct their own narrative and dialogue-based truth. Some governments have helped and even allowed criminal justice agencies to adopt and implement RJ at the local level, while others have legislated or provided funding at the national or regional level to support its use.

SAME STUDIES ON RESTORATIVE JUSTICE

Sherman & Strang shows the results of posttraumatic stress symptoms (PTSS) measured with the Impact of Event Scale-Revised (IES-R) during 1 month of treatment for 192 victims. Prevalence and severity of post-treatment PTSS scores were assessed using independent sample t-tests and chi-square statistics. The magnitude of differences between groups was also measured using effect size analyses. Results of the analyzes show that PTSS scores are significantly lower among victims assigned to RJC in addition to

court criminal justice processing than regular criminal justice processing. There are 49% fewer victims with clinical levels of PTSD and possible PTSD ($IES-R \geq 25$). The main effects of treatment are significant ($t = 2.069$; $p < 0.05$). Findings suggest that RJ conferences reduce clinical levels of PTSS and possibly PTSD in a short-term follow-up assessment [7].

Strang H *et al.* analyzes the responses of 210 victims who participated in the Australian and UK studies. Despite substantial variation in crime types, social contexts, nation, and race, the before-after changes revealed by the qualitative and quantitative data are all in the same beneficial direction [8].

Wolthuis & T. Chapman it reviews international documents and describes legislation and practices in Europe, Africa, Asia, Latin America, North America, Israel and New Zealand. the chapters demonstrate the compatibility between rights and RJ and the importance of a rights approach both in countries initiating RJ and in countries developing RJ beyond its origins within the criminal justice system. [9] (A. Wolthuis & T. Chapman (Eds.)

Female sex offenders were more prone than male offenders to report witnessing violence committed by a woman [10] and during the first 6 months of the year 2019, a number of 11,456 acts of violence committed between family members according to IGPR were reported to the Police. Most adult aggressors were male, and most adult victims are female. The numbers of aggressors, per gender, registered were: 10,621 men, 870 women, 73 boys and 13 girls. The numbers of victims registered with the police, per gender, were: 8975 women, 2098 men, 286 girls, 269 boys. Still, one has to underline the fact that the numbers analysed are the ones registered with officials [11].

THE EUROPEAN PROJECT MEDIAREJ- TRAINING IN MEDIATION AND RESTORATIVE JUSTICE

“Dimitrie Cantemir” University from Targu Mureş is an Associated Partner of MEDIAREJ Erasmus+ project being involved by FUNDATIA PROFESSIONAL which is one of the partners of the Erasmus+ project “MEDIAREJ - Training in Mediation and Restorative Justice” EU Erasmus + Strategic Partnership for Adult Education, 2020-1-IT02-KA204-080081 (Nov 2020 – May 2023).

The project aims at identifying various training methods for RJ trainers, at piloting new training activities to be implemented in the four European

countries (Croatia, Italy, Romania, Spain), and at establishing a network among trained professionals and organizations. Goals of the project are: fostering RJ competencies in different target groups by disseminating the RJ methodology thanks to training courses and multiplier events; developing a standardized competencies framework, a course curriculum for training, original methods and new toolkits; providing training for 28 mediators, trainers and professionals; raising awareness on RJ for other target groups at a local level through 4 dissemination events in Italy, Spain, Croatia, Romania, as well as 2 final conferences to be organized in Trieste and in Brussels; empowering staff and strengthening the operational capacity of local RJ centers, creating a permanent expert group of trainers at the European level; matching an adequate quality standard to build more expertise of experienced mediators, thus allowing skills recognition, facilitating the mobility at the European level of mediation and RJ experts.

CASE STUDY- SUMMARY OF INTERVIEW

Among other activities, the project partners organized a 5-day training programme in Croatia, bringing together 28 participants, mostly experienced RJ practitioners and trainers. Several well-known trainers, teachers, practitioners and/or scholars were approached to contribute to the project findings by sharing their professional and personal experiences in the field of RJ and in humanistic approaches to mediation and RJ. They were contacted for personal interviews to share, as conversations, information about their experience and thoughts in terms of RJ training. All project partners conducted one or more interviews, adapting the questions according to the specific professional interviewed [12].

Here is an interview summary taken in

connection with Juvenile Restorative Justice by Belinda Hopkins, an expert in RJ and Inte De Vuyst from Flemish part of Belgium who works for the ALBA organization as a mediator for juvenile offenders. Inte De Vuyst is a Victim-Offender Mediator and she works with young people, generally, youngsters who are in trouble at home, or at school and who are offered a few weeks away to get some energy. However, she and many of her colleagues work for free as Restorative Justice Mediators with young offenders and their victims. Her goal is to explain to young people what mediation is, what it can offer and let them choose if they are willing to pass through this experience. Another issue raised here is that of recidivism and how a RJ intervention can impact. Inte sustains that recidivism is not a goal in itself but indeed could be annoying and frustrating. Nevertheless, every time it is a new situation, a new victim and the most important thing is that youngsters are given chances even if the story might be almost the same.

The age of young people with whom Inte works is from 12-18. The victims' age is 5 – 87.

An interesting question raised is the difference between the Minor and Adult justice systems. Inte underlines the fact that the minors do not have the whole responsibility, parents are included and a lawyer is compulsory to be present all the time. For minors being taken away from home, it has a huge impact. Also, in Belgium, they say that the judge has to follow how the sanctions are applied and if there were any effects. For adults, it's not the same judge who will make sure about the sanctions applied. Inte replies affirmatively to Belinda's question if the judges get training in Restorative Justice practice and if they understand the system. Moreover, if we talk about Restorative Justice applied to Minors and Adults as a victim of a minor getting a mediation offer is bigger than when you are the victim of an adult.

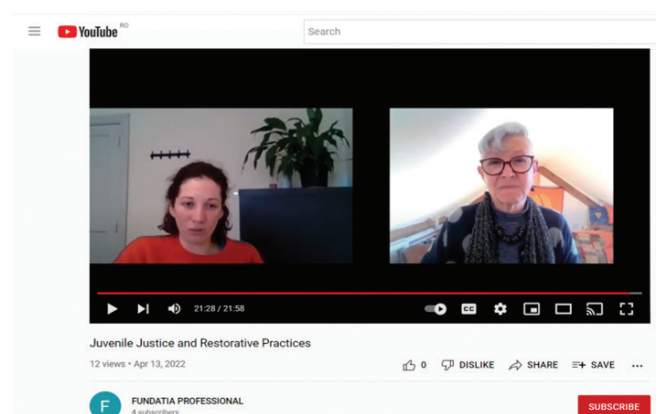
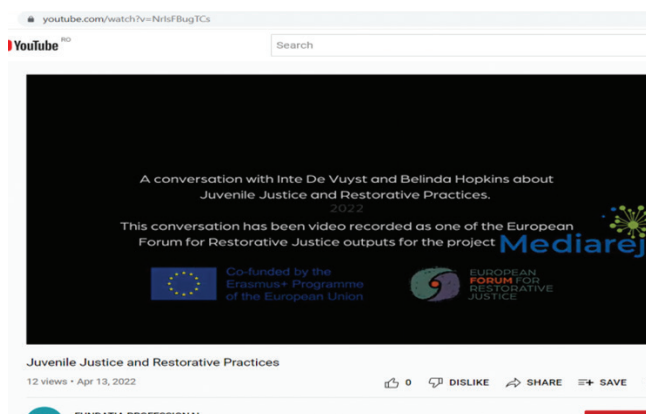


Figure 1 and 2. The video interview is at FUNDATIA PPOFESSIONAL YouTube channel. Source: <https://www.youtube.com/watch?v=NrIsFBugTCs>

There are two cases presented by the participants in the interview which show that a lot of criminal justice personnel because of their background training may be thinking more about the person who's committed the crime and not so much about the victim's needs and that's one of the wonderful things that Restorative Justice can offer, that opportunity for the victim to be heard and be acknowledged.

The interview ends with a question which is for you to find out from the Video Interview with subtitles and from your handout with the transcripts.

TRANSCRIPT OF THE VIDEO INTERVIEW

B: "My name is Belinda Hopkins and I am really happy to be here today with Inte who works for an organization called Alba, and she's going to tell you more about that and Inte you are a victim – offender Mediator for Alba, so first of all"; "It's good to have this time to find out more about what you do. So, would you like to start by telling us a bit about your work and about Alba?"

I: "I've been working with Alba for a couple of years and Alba is located in Belgium in the region of Flanders close to Brussels and Louisville area. We do work with youngsters. We have different kinds of projects within Alba. We work with youngsters who have been in trouble for a while for example at home, in school, all those kinds of things and then we can offer them, for example, a couple of weeks away from home, from school to refine some energy to be away from their normal environment and to rethink about some decisions in life. That's one big part of Alba and the other part is more connected with the justice system. So, I am a victim-offender mediator but we also have colleagues who work with youngsters who have to go and do some learning projects about the crime they committed. They have to go and work for a couple of hours for free for the community or for some organization to try to repair the harm they did to the community. That's what all the workaholics are doing and what I 'm doing with my team. It's a victim-offender mediation between young offenders and victims. So that's very quickly what else we work with youngsters who have trouble, have some problems in some kind of way."

B: "How long do you, when you first start to work with a young person, about how long do you work with them for?"

I: "It's a.. as mediator there are big differences with some of them. I work a month, 2 months, 3 months but sometimes work with them up to two

years, depending on the mediation process. It's more an exception the longer ones. Normally between 3 to 6 months in general but I do have quite a lot of cases that also go over for a year, sometimes even two years when was a very severe trial about things that happened. Things that have to be discussed and sometimes take some more time as six months."

B: "I guess you would describe the work you're doing as restorative work?" "How do you think what the intended outcome of your working with young people in a restorative way is?"

I: "My intended outcome is, might be different as the outcome of the justice system wants to have. My goal is to explain what mediation is, what it can offer, and that's it. That's for me the basis of a basis and if people just got that information and they're saying NO, THAT'S NOT FOR US then that's OK for me because it's up to people to decide what they want to do with what happens, with consequences of what happened. And it's not up to me to just say like I think it should be OK with you to talk with the victim because you will learn something from it. That's not up to me and it's absolutely not my goal. I guess for a judge or public prosecutor they love something on paper in the end in which the people agreed on but that's not my goal. My goal is what do you want and do you need the other person to reach. What you would like to have or like to become or whatever you want to become."

B: "You speak quite a lot of research on the impact of R practice on well use offending I think on adult offending as well now but on usefulness was this concept of recidivism and how a RJ intervention could actually impact on the extent to which a young person then commits further crimes so do you want to tell us something about that? I mean how does the current criminal justice system influence recidivism (which is a word hard to say)?"

I: "It's not a goal that it for us to avoid recidivism. It's always lovely if after mediation, after process, after what people have been going through, that specific person does not commit any other crime because it will affect him/herself, the parents, environment but also a victim. We don't know at that point who is, who it is yet we also see this not often we do have some youngsters that we have been seeing for a while and we will be seeing till they are 18. But every time it can be annoying for us because it's like he didn't learn from last time even though it's not our goal but it's still sometimes a little bit frustrating when you have been talking with some kid and he said I would not ever do it again and then it happens again but every time it's a new victim, it's a new

situation, kind of change and that's the most important thing for us that we keep on giving chances, that we keep on being open and to listen to what happens every single time even though the story might be similar to the previous one and if we feel for ourselves for example: you have this kid for the third, fourth time and I'm like saying I can't do it anymore because it is going to be the same story. Then I pass it on to my colleague who has no history with that person and can be open, can be OK with him."

B: "I think that's really speaks to me as well, what you said because I didn't say at the beginning, because this film is about your work not mine. But I work principally with school staff and in schools and sometimes teachers will say to me: but you know we've been seeing the same person again and I say "yes" but like you've just said. It's a different person that's been affected each time and you know we could speak to JOHN on Monday, and then he-s back with us on Tuesday, he-s back with us on the Wednesday and we say by Thursday: Come on! But actually, on the first day he did something with Mrs. Brown and the second day with Mrs. Smith and the third day, I don't know with Mrs. Davis. Are we going to say on Thursday to Mrs. Evans: Sorry you can't have a R process because we've already seen John three times? NO. I think that's very interesting what you said because RJ I guess is for victim as well as the wrong doer, the perpetrator isn't it? Although does that because you're there primarily for the offenders, aren't you? "

I: "For both."

B: "OK. So that's interesting. Absolutely. You mentioned that you work with young people up to the age of 18. So, what's the youngest age you start to work with?"

I: "As a suspect or offender is always between 12 and 18, the time they committed the crime but, of course, the justice system isn't always as fast as the kids grow up so sometimes, they're already 20 but for victims I had kids from 5 years old and my oldest victim was about 87 more or less. We have differences in age especially for victims."

B: "Do you sometimes have situation where you might be working with a person who in the offender role but another time that very same person is in the victim role?"

I: "All the time. Because the justice system is Black and white, there's no gray and when we experience with people, we work with is that often the story is not black and white. It's gray. Something happened before even it's like someone looking at you in a very angry

way and you react on it than it's only the reaction. For example: hitting someone and not like the whole... Maybe three months before that you were like teasing someone without doing something specifically and then during the mediation the roles of victim and offender change. And absolutely they change and they change again. So, it's very often not like one clear story that one person has done everything wrong and the other one was a good angel Mostly it's not like that."

B: "It's so like that in schools as well. It's like the restorative encounter calls on everyone to have to be accountable, I mean it's rarely just one person, isn't it? It's very interesting. So, what are the differences between, you work with minors in youth justice but what are the differences between the penal system that involved minors and adults, are you able to tell us something about that, and why are the differences so important?"

I: "For me the biggest difference is that they're minors that they don't have the whole responsibility, they are still learning, they're kids which of course influences the way how the penal system should react and reacts on what happens on some kind of crimes, by also contacting the parents. Something happens you should be aware of it; they should do something with it making sure that every occasion there is a lawyer who is there or on standby or at least aware of what is happening. That is when they have to go to talk to the police but also during the mediation, they have the right to talk to a lawyer before anything, they can or they take a lawyer with them just to make sure that all of their rights are respected. Another very important thing for me is that a youngster has to go to the juvenile court, and then the judge will look at what happens, the crime itself which will also take into account the situation. What is happening at home, what is happening in school, the person who is hanging around in the streets doing drugs or s it going to the soccer training every Wednesday. All those things are also taken into account to be sure that there's not just a sanction but also okay what is going we want to know. What is going in a positive way in your life to use this to avoid this kind of problems in the future. I think that's very important especially for everyone, also for adults it is very important. It's very important this should be taken into account as well but especially for minors. If you take them away from home it has a very big impact, they can't go to school, they cannot be with their friends and family. For kids it's a huge difference in their life to be taken away from, even though it's a week. The impact on them is very, very big. And another thing which is a

big difference – a judge told me recently that as a judge for minors, she gets the reports on how the sanction or how the decisions she made are done, how it is going. In the adult system it's the judge and then things happen and then someone else is going to take a look at it. It's not the same judge. Well, the judges for minors they are the same judge for the kid for a couple of years."

B: Oh, brilliant. That's not always the case in the UK. We are trying to spread the training around the judiciary but it's not always the case. That's really great. You spoke earlier how your victims might be from sort of small to really quite old and I was thinking about the process you offer to minors. What happens if an adult is on the receiving end is a victim of a crime committed by a young person, then if they 're lucky they'll get a restorative process but what about if an adult is on the receiving end of harm caused by another adult is there is there a restorative system for them.

I: "Yes, there is. But the law for minors when minor committed a crime is stricter. The first started justice for example, every crime committed by a minor in which the identity of both is known and which is the minor does not like firmly says 'I didn't do this' in all of these cases, mediation should be offered at some point. Well for adults is a bit different, it's not that strict in the law what I understood from it. So, there's no for example, for reminders there's every file which comes in for the public prosecutor. They always should think about it and send it immediately to us. Well for adults, it does not happen. So, that's a big difference. So, as a victim of a minor to get a mediation offer is bigger than when you're the victim of an adult."

B: "That's interesting. Years and years ago, because I was RJ developed first of all in the UK in the youth Justice system, that was when it was first trialed and it was much, much widespread and so if you were "lucky enough" to be the victim of a crime perpetrated by a young person you were more likely to have a Restorative meeting and I remember my husband and we had actually a burglary and it turned out we knew the person responsible. They'd been doing some gardening work for us so when we found out who it was, we were very shocked and I because I worked in the field of R practice and because I was affected and I knew a R meeting would help asked if we could have one, the local police said no they didn't know anything about it and it was only through my contacts in the RJ world that I was able to actually have a meeting when we did have a meeting with the chap who broke into our house which it was very beneficial but I remember then thinking it's quite hard for an adult to access RJ it still is

in the UK. I'm on the board of a charity called why me and we are advocating for everybody whatever their age to have access to associate of justice but we're not there yet."

I: "No. And the same because I had also cases, for example one case: I remember this lady. She was at home and in the evening at some point someone rings the bell and there are three youngsters, and they really try to push open the door and to break in which not the best way to break into a house when there is someone standing in front of you but anyways this happens and they didn't get in but of course for her it was terrifying. Big impact of course and the day after in a police station she already mentions "I would like to meet these kids" and the police said: "No, that's not possible". And she every time she meets someone from the police system or the victim support services, she says: "I would like to meet these kids and see who they are and whether why they are doing this kind of thing because I don't understand I want to understand, I talk to them and I want to explain what it does to me but it is to me how I live now in my house, how I do react on the bell, how do react on the bell, how I react every time: No Ma'am that's not a good idea. They're just little criminals" and at some point, of course it takes time more I think it was more than two years after what happens she told me: Can I finally meet him and I said "Yes" if they agree. And of course, then she was like why couldn't I meet him before and I said "I don't know" People just aren't always aware of the fact that it might be important for the person to beat the person who committed a crime."

B: "I think maybe in your work but a lot of criminal justice personnel because of their background training may be thinking more about the person who's committed the crime and not so much about the victim's needs and that's one of the wonderful things that RJ can offer, isn't it that opportunity for the victim to be heard and be acknowledged and into we're pretty much out of time now. But I wanted to say thank you very much indeed for all your explanation of what you do and answers to my questions. May I end on one question: What is the thing you most enjoy about your work?"

I: "The fact that people can express what they feel and I have the opportunity to work with them instead of people telling them what to do or what to say they can express their feelings, their thoughts and it's up to them and I'm just there to help them and be there and to see what I can do for them and try to find a way to live with what happened and to process what happened and so I think it's an enormous privilege."

CONCLUSIONS

The Council of Europe Recommendation CM/Rec (2018) [13] 8 says that there is a role for all policymakers, practitioners and other professionals involved in criminal justice to promote, enable, or use RJ, or otherwise to understand restorative principles and integrate them into their work [14]. Through RJ, society can play a part in validating the norms resulting from a deliberative process in which the responsibility of the offenders has been effectively mobilized and the needs of the victims have been heard [15]. Restorative justice advocates and therapeutic jurisprudence is looking for new ways to move its ideas towards mainstream criminal justice. Proponents of RJ adopt the language of restorative practices as a comprehensive philosophy and method that allows proactive communication with colleagues and citizens, but also with RJ theorists [1]. Top-quality e-learning and access to e-resources on EU law should become a reality for all professionals. They should complement and multiply the benefits of face-to-face activities with up-to-date material and stand-alone learning tools, so as to make the best possible use of e-justice [16]. Professionals working with young people who have experienced family breakdown should focus on promoting resilience, support and appropriate treatment, in order to promote the best possible results [17].

RECOMMENDATIONS- RESULTS OF THE PROJECT

- Handbook on Training Trainers in Mediation and Restorative Justice includes a literature review on the state of the arts about “training trainers on restorative justice” a consultation process with experts, some recommendations, and a toolkit for future RJ trainers. Available in English, Spanish, Italian, Croatian and Romanian.

- Training trainers in mediation and restorative justice The Toolkit of the Erasmus+ Mediarej project. [18].

Conflict of interest

The authors declare that there is no conflict of interest.

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