Restorative Justice

A Way of Rehabilitating Offenders and Reducing Crime in Europe

Clara Rigoni

Supervisor: Dr. Antoine Buyse
Utrecht University
Academic Year: 2012/2013
ABSTRACT

In the last twenty years, restorative justice has experienced strong development throughout Europe. However, the scepticism demonstrated by legal practitioners towards these practices has impeded their full implementation. Supranational policy and legislative frameworks have often disregarded the potential of restorative practices. This thesis examines the relationship between restorative justice and the formal criminal justice systems of European states to better understand points of convergence and divergence. The rehabilitative potential of restorative justice and its capability of reducing crime are analysed. The paper presents a general overview of the International and European (Council of Europe and EU) legislative framework in this field; have offenders’ needs adequately been addressed by restorative justice policies and legislation? Issues have also been raised about the compatibility of restorative practices with the human rights of the parties, namely with those of the accused. The informal (or semi-formal) character of restorative initiatives is considered a threat to defendants’ legal rights. Through a detailed analysis of the right to a fair trial I will point out the benefits and risks deriving from the use of these instruments, the gaps existing in current legislation and investigate the possible future role of the EU in this field.
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADR</td>
<td>Alternative Dispute Resolutions</td>
</tr>
<tr>
<td>CoE</td>
<td>Council of Europe</td>
</tr>
<tr>
<td>CEPEJ</td>
<td>European Commission for the Efficiency of Justice</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
</tr>
<tr>
<td>ECJ</td>
<td>European Court of Justice</td>
</tr>
<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>EFRJ</td>
<td>European Forum for Restorative Justice</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>FGC</td>
<td>Family Group Conferencing</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Conventant on Civil and Political Rights</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-governmental Organisation</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
</tr>
<tr>
<td>VOM</td>
<td>Victim-Offender Mediation</td>
</tr>
</tbody>
</table>
TABLE OF CASES

EUROPEAN COURT OF HUMAN RIGHTS

- Heaney and McGuinness v Ireland 34720/97 [2000] ECHR
- O’Halloran and Francis v UK (2007) ECHR 545
- Sergey Zolotukhin v. Russia, [GC] 1/02/2009

EUROPEAN COURT OF JUSTICE

- Orkem v Commission, Case 374/87
# TABLE OF CONTENTS

**Introduction** ...................................................................................................................... p. 1

---

**Chapter 1**

Restorative Justice: an Introduction

I. The Rise of Restorative Justice ....................................................................................... p. 5
II. Restorative Justice: Elements and Principles ................................................................. p. 9
III. Retributive and Restorative Justice .............................................................................. p. 12
IV. Rehabilitative and Restorative Justice ......................................................................... p. 19
V. The Implementation of Restorative Justice .................................................................. p. 23
   A. Victim-Offender Mediation ...................................................................................... p. 24
   B. Conferencing ........................................................................................................... p. 27
   C. Peacemaking Circles ............................................................................................... p. 29
VI. Conclusions ..................................................................................................................... p. 34

---

**Chapter 2**

The International and European Legal framework

I. Introduction ......................................................................................................................... p. 35
II. The Council of Europe .................................................................................................... p. 36
III. The United Nations ......................................................................................................... p. 43
IV. The European Union ...................................................................................................... p. 49
V. Conclusions ....................................................................................................................... p. 56
Chapter 3

Restorative Justice and Offender’s Human Rights: Complementary or Irreconcilable Paradigms?

I. Introduction........................................................................................................................................p. 57

II. The Right to a fair trial .........................................................................................................................p. 59

   A. Presumption of Innocence and Right to Remain Silent/Privilege against Self-Incrimination (nemo tenetur) .........................................................................................................................p. 60

   B. Double Jeopardy/ Ne bis in Idem .................................................................................................p. 64

   C. Proportionality of Punishment and Legal Certainty.................................................................p. 67

III. Other Human Rights Concerns ........................................................................................................p. 69

IV. Conclusions ..........................................................................................................................................p. 72

Conclusions .............................................................................................................................................p. 75

Bibliography ...........................................................................................................................................p. 79
Restorative justice: a way of rehabilitating offenders and reducing crime in Europe

Rigoni, Clara

https://doi.org/20.500.11825/637
Downloaded from Open Knowledge Repository, Global Campus’ institutional repository