

Restorative Justice

A Way of Rehabilitating Offenders and Reducing Crime in Europe

Clara Rigoni

Supervisor: Dr. Antoine Buyse

Utrecht University

Academic Year: 2012/2013



Universiteit Utrecht

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 OF ACRONYMS

ADR	Alternative Dispute Resolutions
CoE	Council of Europe
<i>CEPEJ</i>	European Commission for the Efficiency of Justice
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EFRJ	European Forum for Restorative Justice
EU	European Union
FGC	Family Group Conferencing
ICCPR	International Covenant on Civil and Political Rights
NGO	Non-governmental Organisation
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
VOM	Victim-Offender Mediation

TABLE OF CASES

EUROPEAN COURT OF HUMAN RIGHTS

- *Funke v France* (1993) 16 E.H.R.R. 297
- *Heaney and McGuinness v Ireland* 34720/97 [2000] ECHR
- *Murray v UK* (1996) 22 E.H.R.R. 29
- *O'Halloran and Francis v UK* (2007) ECHR 545
- *Saunders v UK* (1996) 23 E.H.R.R. 313
- *Sergey Zolotukhin v. Russia*, [GC] 1/02/2009

EUROPEAN COURT OF JUSTICE

- *Orkem v Commission*, Case 374/87
- *Gözütok and Brügge v Commission* (2003) ECR I-5689

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 (<i>nemo tenetur</i>)	p. 60
B. Double Jeopardy/ <i>Ne bis in Idem</i>	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

2013

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