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DOI <https://doi.org/10.32849/2663-5313/2022.4.13>**Olexandra Kaminska,***Postgraduate Student at the Department of Criminal Procedure, National Academy of Internal Affairs, 1, Solomianska square, Kyiv, Ukraine, postal code 03035, a.immensely@gmail.com***ORCID:** 0000-0002-1524-0176Kaminska, Olexandra (2022). Analysis of applying restorative justice to juveniles in some countries. *Entrepreneurship, Economy and Law*, 4, 84–88, doi: <https://doi.org/10.32849/2663-5313/2022.4.13>

## ANALYSIS OF APPLYING RESTORATIVE JUSTICE TO JUVENILES IN SOME COUNTRIES

**Abstract.** *The aim* of the article is to analyse the application of restorative justice to juveniles in foreign countries. **Research methods.** The work is performed using general scientific and special methods of scientific knowledge: dialectical, historical and legal, formal and logical, methods of hermeneutics, generalisation, comparison, etc. **Results.** The article studies the experience of foreign countries in the context of the introduction of restorative practices in the field of criminal justice. The main goal of restorative justice is to ensure and protect the rights of juveniles who have committed a criminal offense, including the right to a prosperous and dignified existence. Refusal or minimisation of criminal punishment, implementation and effective application of restorative justice are aimed at the realisation of the interests of both the juvenile offender and society. It is emphasized that mediation can be applied to persons both at the pre-trial and at the court stage. It can serve as a waiver of the accusation or a mitigation of punishment. A feature is also the consent of parents or guardians to conduct mediation in relation to a minor. If the latter requires the presence of legal representatives (guardians, custodians) during the reconciliation procedure, such participation must be ensured. As for children who have not reached the age of 15, the participation of such persons in the reconciliation procedure is mandatory and the consent of the child is not required. **Conclusions.** Modern ways of responding to juvenile delinquency in the legal systems of foreign countries are focused on the educational approach, taking into account alternative methods of working with adolescents who have committed offenses. This model is called "restorative justice," that is, a process in which in criminal proceedings against juveniles who have committed offenses, damages may be compensated or otherwise compensated. This can be dialogue, community service, charity, donations, and so on. Most practices involve mediation (reconciliation) between the parties through a mediator.

**Key words:** justice, restitution, mediation, conflict, indemnification, juvenile, reconciliation.

### 1. Introduction

Recently, restorative justice has been spoken of quite frequently. Different countries of the world call this process in its own way, but it has the same goal – reconciliation of the parties. Restorative justice has been applied for years in criminal proceedings in the developed world, particularly in juvenile criminal proceedings. This concept envisages the following actions: dialogue between the offender and the victim, reparations, public works, donations and many unique names – “restitution”, “transformative justice”, “informal justice” etc. At present, restorative justice has many forms of expression – mediation, sentencing circles, a conference of justice and others.

Some aspects of restorative justice were under study by foreign scholars such as Albert Eglash, Howard Zehr, John Braithwaite, Chris Nielsey and others.

The purpose of the article is to analyse the application of restorative justice to juveniles in foreign countries. To achieve this purpose, the following objectives should be accomplished: to consider the concept of restorative justice, which has emerged as an alternative to classical criminal punishment; to analyse the application of restorative juvenile justice in the international arena.

The research methodology includes the use of general scientific and special methods of scientific knowledge: dialectical, historical-legal, formal-logical, hermeneutic methods, generalisation, comparison, etc.

The scientific novelty is that, relying on the review of the world practice of restorative justice in respect of juveniles, the stages of the establishment and development of restorative justice have been identified; the stages of formation of “restorative” programmes, aimed at reconciliation of the victim and the offender,

have been determined; the ways of application of different forms of justice in such countries as Austria, Belgium, Finland and Slovenia have been analysed.

## 2. Features of restorative justice

The world first heard about the introduction of restitution in criminal proceedings from Albert Eglash, a psychologist who worked with adults and juveniles who had committed criminal offences. In 1950, Albert argued that the justice system lacked humanity and efficiency and that alternative, more effective methods were needed. In the same year, he created the concept of "creative restitution", which was to help the offender find a way to compensate the victims for the effects of his or her actions (Eglash, 1958, p.20-34).

Eglash emphasised that creative restitution has its features: 1) it is a constructive act; 2) it is unlimited; 3) it includes "self-determined" behaviour; 4) it can have a group basis (Eglash, 1958, pp. 619-622). That is, restitution can be described as follows: it is the active behaviour of the offender, implying reparation for the damage suffered and establishing positive contact with the victim. Such activity increases the offender's self-esteem, alleviates guilt and anxiety, and prevents the commission of new offences (Eglash, 1958, pp. 20-34). Individual principles of Albert Eglash's creative restitution were reflected in further scientific research and became the basis for the introduction of restorative justice as such.

In the 1970s, American criminologist Howard Zehr first began to talk about alternative ways to fight crime in the context of restorative justice. In his work *Changing Lenses: A New Focus for Crime and Justice* (Howard Zehr, 2005), justice was considered from two perspectives – punitive and restorative, which became the foundation for the introduction of restorative justice programmes in legal systems (Howard Zehr, 2005).

The establishment and development of restorative justice began in the United States, Canada, the United Kingdom and New Zealand in the 1970s. Then a variety of "restorative" programmes began to form. These are:

1) "Prisoners' Rights and Alternatives to Prisons" (1972) – prisoners' rights protection and assistance with social reintegration after serving their sentence;

2) "Conflict Resolution" – a set of certain methods and principles that provide for the peaceful resolution of conflicts and are based on two principles – care for oneself and others;

3) "The Victim-Offender Reconciliation Program" (VORPs) – holding of meetings to resolve the conflict peacefully through a mediator (Community Justice Alternatives. The Victim-Offender Reconciliation Program, 2000);

4) "The Victim-Offender Mediation" (VOM) – similar to the previous, but also used as an alternative punishment (The Centre for Justice & Reconciliation. The Victim-Offender Mediation, 1974);

5) "Family Group Conferences" (FGC) – also involved family members, friends, acquaintances, etc. This program was applied to juvenile offenders. This trend is currently being developed in the context of juvenile justice (Mark S. Umbreit, 2000, pp. 3-5).

6) Sentencing Circles – aimed at a restorative system for the offender. It was first introduced in Brazil, and is now operational in the United States, Germany, Canada, and the United Kingdom (The Centre for Justice & Reconciliation. Sentencing Circles).

It should be noted that the above-mentioned programmes have marked the beginning of the development of restorative justice worldwide. Today, despite criticism from academics, restorative justice is an effective method of preventing and countering offending.

The implementation of the "restorative" function, which should bring juvenile justice to a new level, is important for modern criminal proceedings in respect of juveniles. The restorative function is aimed at achieving a balance in conflict situations between the victim, the offender and society in order to restore the "distorted" social status of the offender. This enables to form elements of reflection in a juvenile suspect or accused person and ability to assess his or her unlawful actions. Moreover, this reduces the length of the investigation by means of conciliation and compensation, and also reduces the risk of the criminal justice system effect on the juvenile. The restorative function makes it possible to attract the victim to the personality of the juvenile and to take part in the programme for his or her resocialisation.

The restorative model of justice is one of the striking stages in the development of juvenile justice. The basis of this model is an enabling environment for the personal communication of the victim and the offender and the application of alternative methods of punishment to the latter. Therefore, restorative justice does not exist without mediation, which facilitates the process of rehabilitation of a juvenile offender. We propose to consider the practice of applying various forms of restorative justice on the example of individual countries of the world.

## 3. Restorative justice for minors in some countries of the world

In Austria, mediation between the offender and the victim (Tatausgleich) has been legislated since 1988 for juveniles, and since 2000 for adults. It is one of the ways of exemption from

criminal liability at the pre-trial or trial stage (Gombots, 2015, pp. 19-25).

Mediation is usually used by the prosecutor as a ground for refusing to prosecute. Mandatory requirements for its application are: the offence must not be grave (or misdemeanour), all circumstances must be clarified, the maximum punishment must not exceed five years.

One of the conditions for mediation is that the offender must be prepared to bear responsibility for the act. It is also characteristic that the consent of the victim is not required during mediation with juvenile offenders. The legal effects of the procedure are assessed by the prosecutor, but if the offender and the victim are reconciled, he can drop the charges (which will be the legal effect). Therefore, the role of the prosecutor in mediating between the offender and the victim is crucial. It is up to him to decide whether or not mediation is meaningful.

For mediation, all cases are referred to the non-governmental organisation NEUS-TART, which operates under the supervision of the Ministry of Justice. Mediators (conciliators) apply different methodological techniques to each case, and their work is characterised by close cooperation with prosecutors and judges.

It should be noted that the rate of recidivism among juveniles after mediation is 15%, while after court decisions it is 41%. This certainly demonstrates the effectiveness of the system. Currently, together with mediation, so-called rehabilitation conferences are applied to juveniles in Austria.

Restorative justice in Belgium began in the late 1980s. The juvenile justice system in this country focuses on the education and protection of juveniles. These positions are expressed in the Youth Justice Act (The Youth Justice Act, 1965). In general, the modern approach to justice in Belgium is to help the juvenile to comprehend responsibility and to understand that his or her wrongful acts have violated the rights of the victim.

Rehabilitation conferences have also been used in Belgium (since 2006). They include many participants, both on the part of the victim and the offender and representatives of the authorities (police, social workers, teachers, etc.). Now "circles of reconciliation" have been introduced on an experimental basis. Special funds had also been established in some regions of Belgium to enable juveniles who had committed offences to pay compensation to victims. Such funds were allocated only to juveniles who were unable to make reparation. The procedure is as follows: the juvenile voluntarily works for a limited number of hours. Payment for his or her work is transferred through the fund directly to the victim.

Belgium is the country where restorative justice (in various forms) is possible at all stages of criminal proceedings. The gravity of the act is not taken into account, and the procedure is available anywhere in the country and financed by the authorities.

The Finnish experience started that mediation between the victim and the offender on an experimental basis in 1983 and was used continuously in the 1990s (Lappi-Seppala, 2015, pp. 243-266). First, the idea of using mediation as an alternative to justice in criminal proceedings (without its application in juvenile justice) arose. But after a while it began to be used in different areas of public life such as in the resolution of conflicts in the family, school, etc. The basic principles of mediation in criminal proceedings in Finland are: 1) Mediators are ordinary citizens who have been trained; 2) The basis is *Restorative justice* ideology; 3) Fully voluntary procedure; 4) It may be a reason for not charging or mitigating punishment; 5) The nature of the offence committed, the relationship between the parties and other factors shall be taken into account; 6) It shall not apply to "family offences" (domestic violence) and crimes against juveniles; 7) If the victim is under 18 years of age, mediation is prohibited (Ervasti, 2014, p. 26).

In the case of juvenile offenders, mediation may be applied to them at both the pre-trial and trial stages. It may serve as a renunciation or mitigation of a sentence. A specificity is the consent of parents or guardians to the mediation of a juvenile. If the latter requires the presence of legal representatives (guardians, trustees) during the conciliation, such participation should be ensured. In respect of children who have not attained 15 years, the participation of such persons in the reconciliation procedure is compulsory and the consent of the child is not necessary.

Mediation has been conducted in Slovenia since 1999. It can be applied in pre-trial investigation (priority) and in court. It should be noted that mediation can be applied by the prosecutor as a ground of exemption from liability, while mediation is applied by the court as a punishment in proceedings against juveniles (Filipčič, 2015, pp. 849-874). At the pre-trial stage, the prosecutor may apply mediation in proceedings against juvenile offenders only if the penalty is five-year imprisonment (three for adults). Moreover, as educational measures, the court may appoint the fulfilment of certain obligations ("authorised" and "prohibited"). These conditions are provided for by the Criminal Code and include, inter alia, the obligation to achieve reconciliation with the victim (equivalent to mediation) (Filipčič, 2015, pp. 849-874).

In addition, the elements of restorative justice are manifested in actions such as reparations and public works. Compensation may take the form of forgiveness, payment of a certain amount, performance of certain gratuitous works, charity, donation, etc. Public works are characterised as a way of educational influence. But a juvenile must consent to such work. At the pre-trial stage, the duration of the work is 60 hours (within 3 months), and at the trial – 120 hours (within 6 months) (Filipčič, 2015, 849-874).

#### 4. Conclusions

Therefore, in the legal systems of foreign countries, modern ways of responding to juvenile delinquency are focused on the educa-

tional approach, taking into account alternative methods of working with adolescents who have committed an offense. Most practices involve mediation (reconciliation) between the parties through a mediator. Mediators have the task of removing the juvenile from the system of punitive proceedings, preventing the commission of new crimes and gradually socialising the child. Such programmes are carried out only when the offender has admitted the illegal act and is willing to make reparation (in any form). The experience of Belgium in reconciling the parties, regardless of the gravity of the offence, is noteworthy. Moreover, the Finnish experience of involving the parents of a juvenile offender in mediation is valuable.

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## АНАЛІЗ ЗАСТОСУВАННЯ ВІДНОВНОГО ПРАВОСУДДЯ ЩОДО НЕПОВНОЛІТНІХ У ДЕЯКИХ КРАЇНАХ СВІТУ

**Анотація.** *Метою* статті є аналіз застосування відновного правосуддя щодо неповнолітніх у зарубіжних країнах. *Методи дослідження.* Робота виконана з використанням загальнонаукових та спеціальних методів наукового пізнання, таких як: діалектичний, історико-правовий, формально-логічний, методи герменевтики, узагальнення, порівняння тощо. *Результати.* Стаття присвячена вивченню досвіду зарубіжних країн у контексті впровадження у сферу кримінального судочинства відновних практик. Головна мета відновного правосуддя спрямована на забезпечення та захист прав неповнолітніх, що вчинили кримінально каране діяння, зокрема права на благополуччя та гідне існування. Відмова від застосування кримінального покарання або його мінімізація, впровадження та ефективне застосування відновного правосуддя спрямовані на реалізацію як інтересів дитини-правопорушника, так і суспільства загалом. Наголошено, що медіація може застосовуватись до осіб як на досудовому, так і на судовому етапі. Вона може слугувати відмовою від обвинувачення або ж пом'якшенню покарання. Особливістю також є згода батьків або опікунів на проведення медіації щодо неповнолітнього. Якщо останній вимагає присутності законних представників (опікунів, піклувальників) під час проведення процедури примирення, то така участь повинна бути забезпечена. Що ж стосується дітей, які не досягли 15-річного віку, то участь таких осіб у процедурі примирення є обов'язковою і згоди дитини не потребує. **Висновки.** Сучасні способи реагування на злочинність неповнолітніх у правових системах зарубіжних країн орієнтовані на виховний підхід з урахуванням альтернативних методів роботи з підлітком, який вчинив правопорушення. Таку модель називають «відновним правосуддям» – це процес, під час якого у кримінальних провадженнях щодо неповнолітніх, які вчинили правопорушення, завдані збитки можуть бути відшкодовані або компенсовані іншим чином. Це може бути діалог, виконання громадських робіт, благодійність, пожертвування тощо. Більшість практик передбачає медіацію (примирення) між сторонами за допомогою посередника або ж медіатора.

**Ключові слова:** правосуддя, реституція, медіація, конфлікт, відшкодування збитків, неповнолітній, примирення.

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