

# Hard times for restorative justice in Bulgaria

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Restorative justice (RJ)<sup>1</sup> as a new more humane paradigm of criminal justice in which heart stands the idea of restoring the damage to the victim and offender, balance and security in society, and not the punishment, recently gained more supporters in Bulgaria.<sup>2</sup> Its introduction as a part of the criminal justice system responses to the need for fundamental change in the ways of punishing crimes. At a certain moment social awareness requires radical measures to delete the negatives of the traditional model of combating crime. A necessity for something new appears to neutralize public dissatisfaction from the current status quo. Restorative justice is the novelty, proved adequate response to this need.<sup>3</sup>

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<sup>1</sup> H. Zehr (1990) *Changing Lenses: A new focus for crime and Justice*. Scottsdale: Herald Press; M. Wright (1991) *Justice for Victims and Offenders*, Open University Press; D. Van Ness & K. Strong (2006) *Restoring Justice. An introduction to restorative Justice*. 3rd edition; Anderson Publishing; G. Johnstone (2002) *Restorative Justice. Ideas, values, debates*, Willan Publishing; I. Aertsen, R. Mackay, C. Pelikan, J. Willemsens, J. & M. Wright (2004) *Rebuilding Community Connections – Mediation and restorative justice in Europe*. Strasbourg: Council of Europe Publishing; J. Dussich & J. Schellenberg (eds.) (2010) *The Promise of Restorative Justice. New approaches for criminal justice and beyond*. Boulder, CO/London: Lynne Rienner Publishers; etc.

<sup>2</sup> D. Chankova (2002) *Victim–Offender Mediation*. Sofia: Feneya; D. Chankova (2011) *Restorative Justice. A comparative analysis*. Sofia: Avangard Prima; V. Genova (2013) 'Restorative practices'. *Society and Law*, 2, 40-52; D. Anzova (2015) 'Restorative justice – needed reform'. *Law, Politics, Administration*, 1, 77-92; etc.

<sup>3</sup> L. Sherman & H. Strang (2007). *Restorative Justice: The evidence*. London: Smith

A huge amount of literature on RJ concept was published recently<sup>4</sup> and engaged the attention of legislators and practitioners from criminal justice systems around the world as well as of a number of international governmental and non-governmental organizations such as the United Nations, the European Union, the Council of Europe, the European Forum for Restorative Justice and so on. Dozens of universal and regional international instruments promoting RJ were adopted.<sup>5</sup> Logically, this issue was raised in Bulgaria as well. Similarly to other Central and Eastern European countries, after the fall of the totalitarian regime in 1989, Bulgaria has gone through processes of radical transformation of the political and legal systems, the economy, international relations and societal life. While discussing the reform of the criminal justice system, the relevance of RJ was taken under consideration.

However, Bulgaria's way to restorative justice was and still is rather uneasy. Traditionally, the Bulgarian legal system is based on a punitive philosophy. The retributive approach prevails over the restorative elements in Bulgarian criminal justice. Even when some typical restorative interventions, such as reconciliation and reparation, could be identified in Bulgarian ancient customary law, very few restorative justice elements could be found in the operative legislation under the socialist regime, and these related mainly to juvenile delinquency and complainant's offences.

After 1989, steps were undertaken to modernise domestic legisla-

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<sup>4</sup> A. Pitsela & E. Symeonidou-Kastanidou (eds.) (2013) *Restorative Justice in Criminal Matters: Towards a new European perspective*. Proceedings from the International Conference, 16–17 May 2013, Thessaloniki, Greece. Athens-Thessaloniki: Sakkoulas Publications; D. Cornwell, J. Blad & M. Wright (eds.) (2013) *Civilising Criminal Justice. An international restorative agenda for penal reform*. Waterside Press; F. Dünkel, J. Grzywa-Holten & Horsfield, P. (eds.) (2015). *Restorative Justice and Mediation in Penal Matters: A stock-taking of legal issues, implementation strategies and outcomes in 36 European countries*. Vols 1 & 2. Mönchengladbach: Forum Verlag Godesberg; etc.

<sup>5</sup> D. Chankova (2008) 'Review of international instruments of restorative justice and victim-offender mediation', *Legal Tribune*, 1, 56-62.

tion and standardize it with European Union law and international standards. But these steps were not systematic and comprehensive. There are many indicators that Bulgaria has been becoming more repressive. A number of recently created criminal offences carry severe penalties, for example that envisage long periods of custody. As crime rates increase, sanctions for traditional crimes also increase. Although the legislation provides for alternatives to punishment, in reality, punishment remains a preferred instrument.

Long time new criminal policies, and specifically RJ, remained at the periphery of the policymakers' and the public's attention, although they enjoyed full support of academics and non-governmental organizations. The reform of criminal justice system, including introduction of restorative justice, was postponed many times for different reasons.

One of them, easily and often referred to, but with less and less relevance, is the lack of information and know-how. While it is true that restorative justice, as an idea and practice, was relatively new to the Bulgarian legal environment, especially at the beginning of the long transitional period, this factor is increasingly less valid. As mentioned, a good body of research is already available in Bulgarian as well as best practices guides – results of numerous international projects with Bulgarian participation. RJ is now part of the curricula of many universities and taught in different forms of continuing education. Information campaigns, TV and radio broadcastings, and many other promotional events, etc. have been launched.

The other reason for the delay in developing restorative justice is pressure to combat high crime rates. Restorative justice is often seen as too soft a response to crime. The high crime rate (mainly that of reported and sentenced crime) is a dramatic obstacle indeed. Since the beginning of the 1990s, recorded crime in Bulgaria has doubled<sup>6</sup> and has remained constant during many years through transition – disturbing and nurturing sceptics. At the same time we have experienced an extremely low clearance rate and incapacity of law enforcement agen-

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<sup>6</sup> National Statistics Institute, [www.nsi.bg](http://www.nsi.bg) (accessed 7 April 2017).

cies to cope fully with growing crime rates. An indication for the latter has been the constant criticisms of the European Commission towards the Bulgarian justice system under the Cooperation and Verification Mechanism. Hence, the fear of crime among the general public has been increasing. That is why we have witnessed a rising penal populism; some groups of crime victims have very loudly demanded more and more severe punishments, and as a result the penalties – envisaged and imposed – become higher and harsher.

Rather surprisingly, and in contrast with other European countries, restorative justice met strong resistance, mainly from some parts of the judiciary. Victim–offender mediation and other restorative practices were considered as directly affecting the sovereignty of the state and its hegemony in matters of justice as well as threatening the lawyers' vested interests and territory. Opinions have even been expressed that RJ is a 'shadow justice', a 'second class justice' or a 'denial of justice'. All these led to mistrust towards informality and extrajudicial mechanisms.

The other reason for the delay was the lack of built civil society. It is true that after the fall of communism, local communities were very weak, the 'sense of belonging' was almost inexistent, and this further prevented the introduction and implementation of RJ as it relies on cohesion. At the dawn of democracy civil society was rather passive; there were no strong shared values. Although not yet fully functioning, we can say that nowadays we have a growing civil sector in Bulgaria and, according to the latest sociological surveys, it is ready to embrace RJ.<sup>7</sup>

In this context, the state has not been pro-active towards RJ until

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<sup>7</sup> D. Chankova & E. Staninska (2012) 'Bulgaria on the road to restorative justice and victim-offender mediation'. In: D. Miers & I. Aertsen (eds.), *Regulating Restorative Justice. A comparative study of legislative provisions in European countries*. Frankfurt am Main: Verlag fur Polizeiwissenschaft, pp. 101-119; D. Chankova (2014). 'More justice for crime victims in Bulgaria'. In: T. Gavrielides (ed.) *A Victim-led Criminal Justice System: Addressing the paradox*. London: IARS Publications, pp. 189-205.

very recently. As Bulgaria belongs to the continental legal system, the principle of legality is fundamental and legal safeguards are an 'icon', and therefore the state's endorsement of RJ in the law is essential. All the above-mentioned institutional aspects and sociological and cultural factors significantly delayed and hindered the process of RJ implementation in Bulgaria.

In 2004 the Bulgarian Parliament finally adopted the long-awaited Mediation Act.<sup>8</sup> This was the natural completion of the non - governmental organizations' work and academic underpinning on promoting and applying mediation as a conflict resolution method. The introduction of mediation was also inevitable in the context of the harmonization of Bulgaria's national legislation with the EU law, the need to follow the Recommendations of the Council of Europe's Committee of Ministers encouraging the application of mediation in civil, family, administrative and criminal matters, and the UN resolutions on restorative justice. According to Article 3, paragraph 1 of the Mediation Act, mediation may be used in civil, commercial, labor, family and administrative disputes, related to consumer rights and other disputes involving natural and/or legal persons, including trans-border disputes. Paragraph 2 of Article 3 stipulates that mediation shall also be available for cases covered by the Penal Procedure Code. However, the last Penal Procedure Code (2006) did not include any provision to this effect, and this is still valid. Now the time has eventually come as Bulgaria has to implement Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.<sup>9</sup> According to article 12.2 of the Directive, member states 'shall facilitate the referral of cases, as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral'. In fact, the Victims' Directive did not accelerated RJ

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<sup>8</sup> State Gazette N 110/2004.

<sup>9</sup> L 315/57 Official Journal of the European Union, 14.11.2012.

spreading to a necessary degree. It recognizes that restorative justice services, including, for example, victim – offender mediation, family group conferencing and sentencing circles, can be of great benefit to the victim. However, it put the accent on safeguards to prevent secondary and repeat victimization, intimidation and retaliation. According to the Directive, RJ services should have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm. Measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services. The restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time. Before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement.

All these are well known and observed. It seems, Directive considers RJ as something we should worry about, we should be very careful for, and has a defensive nature towards RJ. Evolution in a negative aspect could be even noticed. Alarming, insisting on attention and safeguards while applying RJ practices, is the main point.

The concerns, expressed in the Directive, are hypertrophied. It is proven<sup>10</sup> that there are no higher risks for further victimization in RJ processes in comparison to any other criminal process. Rather, preserved interests in the criminal justice system played negative role and the impact of other lobbying structures has been taken into account predominantly. However, these influenced unfavorably and further delayed RJ implementation in Bulgaria.

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<sup>10</sup> H. Strang & L. Sherman (2006) 'Restorative justice to reduce victimization', in: B. Welsh & D. Farrington (eds.) *Preventing Crime: What works for children, offenders, victims, and places?* Dordrecht: Springer, pp. 147-160; I. Vanfraechem, D. Bolivar Fernandez & Aertsen, I. (2015) *Victims and Restorative Justice*. London: Routledge, etc.

Furthermore, the latest global crisis with its numerous dimensions – economic, security-related, spiritual, etc. additionally deteriorated the conditions for RJ application, on European stage and particularly in Bulgaria. The long-lasting and already institutionalized penal crisis<sup>11</sup> deepened and become a part of our routinized understanding for criminal justice system. We witnessed a general crisis of penal resources and chronic crisis of legitimacy, based on total ineffectiveness in controlling crime. The crime rate remains high, feeling of insecurity is common, and as a result new ideas are not easily adopted. Under these circumstances the pretty mild restorative justice approach looks inappropriate at first glance, indeed.

Moreover, victim support organizations have been claiming for a long time that they better protect the interests of the victims. They consider restorative justice as primarily offender-oriented. It has to be admitted that victims' involvement in RJ may be considered as too heavy a burden for victims and disregard of their rights, to some extent. The opportunity offered to victims to be heard and to play a crucial role in the aftermath of the offence may be felt by them as a moral obligation or even a duty. Walgrave<sup>12</sup> replies to this allegation by saying that, in principle, the fact of being victimized is not a reason for ceasing to be a fully-fledged citizen, including rights but also responsibilities. We must, he says, theoretically hope that also victims, like other citizens, are committed to "common self-interest" and are willing to search for socially constructive solutions to their victimization and to the social unrest caused by the offence.

RJ does not oppose the interest of the victim and offender. It presumes that both have interest in a justice approach that aims at resolv-

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<sup>11</sup> M. Cavadino & J. Dignan (2006) *Penal Systems. A comparative approach*. London: Sage.

<sup>12</sup> L. Walgrave (2009) 'Victims in restorative justice', in: O. Hagemann, P. Schafer & S. Schmidt, S. (eds.) *Victimology, Victim Assistance and Criminal Justice. Perspectives shared by international experts at the Inter-University Centre of Dubrovnik*. Mönchengladbach / Kiel: Niederrhein University of Applied Sciences in cooperation with Kiel University of Applied Sciences, p. 87.

ing problems caused by crime, rather than imposing a punishment. That is why more and more victim advocates understand that taking part in RJ is in the interests of the victims. Of course, a fraction of the victim movement, however, will remain resistant. Originally, victims' advocates had a monopoly of speaking for the victim, which gave them legitimacy and prestige. The emergence of RJ as a new player on this "market" has disturbed this monopoly, which is sometimes difficult to accept.

Happily, the current Bulgarian politicians eventually showed a vision. In the Updated Strategy for the Reform of the Criminal Justice System, adopted by the government in December 2014, RJ is put high on the agenda and considered as a particularly relevant instrument for juveniles. The Minister of Justice has convened experts in a working group, aiming to develop proposals *de lege ferenda* for promoting victim-offender mediation and other restorative models in different fields, with a special focus on juvenile delinquency. As a result, a Draft of new Juvenile Justice Act is being developed and is on its way to the Parliament. This Act regulates the terms and conditions of diverting juveniles from the criminal proceedings, the imposition of corrective and educational measures and application of some restorative practices – mediation and family group conferencing. Undoubtedly, this is a huge progress, having in mind that many other legislative initiatives aiming restorative justice introduction, failed in the past ten years. Let us believe that finally the legislator will adopt a modern law which is targeted to the most needed group – juveniles – but will further promote restorative climate in Bulgaria in difficult times.

However, to accelerate RJ developments it is also important to allocate the necessary funds. RJ services assume not only non-governmental organizations' and volunteer's involvement but also some state's support, especially in relation to crime victims. It is essential to continue with further training of mediators, judges, prosecutors, lawyers, police officers, probation and prison staff. Systematic measures for raising awareness among general public and dissemination of information should be undertaken.



Restorative justice has future in Bulgaria, even in hard conditions. There is enough evidence in comparative aspect that it is something good for the victim, the offender and the community. There are people ready to work for this goal, and their number is increasing every day. Definitely, it is an exciting time for RJ developments in Bulgaria.

