Rethinking Criminal Justice restoratively.
Challenges, risks and possibilities for the European continental law.

A few theoretical coordinates followed by a confrontation with the Italian and Czech experience

Petra Masopust Šachová, PhD (Palacký University Olomouc, Czech Republic)

Federico Reggio, PhD (University Verona, Italy)
The Czech experience: Promising beginning – doubtful reality

What the Czech Criminal law knows as restorative?

- Mediation as a tool of Probation and Mediation Service (Act, 2000)
- Building new service, PMS as the only provider of mediation
- Restorative Justice Programmes (RJP) as a services under the Victim Protection Act (VPA, 2013)
  - a service under VPA offered by accredited NGOs
  - what is the relationship btw. Mediation – RJP?
  - RJP as an empty word, no rules, no conditions, no protection of procedural rights (guilt, confidentiality etc.)
Current numbers

- Number of mediations decreasing, no RJP in practice (with one exemption – Prison Fellowship Int. in Czech Rep.)

<table>
<thead>
<tr>
<th>Year</th>
<th>Mediation in total</th>
<th>Adults</th>
<th>Juveniles</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>1276</td>
<td>1071</td>
<td>205</td>
</tr>
<tr>
<td>2015</td>
<td>1124</td>
<td>937</td>
<td>187</td>
</tr>
<tr>
<td>2016</td>
<td>980</td>
<td>836</td>
<td>144</td>
</tr>
<tr>
<td>2017</td>
<td>611</td>
<td>543</td>
<td>71</td>
</tr>
</tbody>
</table>

Source: Probation and Mediation Service
Criminal Procedure Code

- Purpose: properly **ascertain criminal offences and to rightfully punish their offenders**

- Main diversions: **Conditional Discontinuation of Criminal Prosecution, Settlement:**
  - Minor crimes (x “Criminal Order”)
  - they allow RJP to be part, but not a legal condition of the diversion,
  - the destiny of agreements as a result of RP totally unclear,
  - no protection of procedural rights of RP participants (guilt, confidentiality etc.)
no purpose of the Code/punishment defined

when imposing punishment, legally protected interests of parties injured by the criminal offence shall be taken into account

alternatives to imprisonment considered as restorative, especially: community service, house confinement, suspended sentence of imprisonment (with supervision), several types of punishment allow “adequate restrictions and obligations” to be imposed (i.e. to provide the aggrieved person with adequate satisfaction)
Summary

- Reparation of the damage and relationships **not considered as the purpose** of the Czech Criminal Law

- Mediation, **RJP not integral part of the system** supported efficiently by law – Dual-track mode

- RJ perspective **connected with “side-topics”**, not RJP – misunderstanding about the RJ core principles and goals
The issue of integrating RJ and CJ has been widely stretched in the RJ debate.

No doubt that RJ has gained a wider attention among doctrine, jurisprudence and legislators, and has inspired reforms.

RJ hasn’t yet expressed all its reformative potential.

Two ongoing risks:

- RJ remains a sort of “Indian reservoir”
- RJ offers an interesting name for “changing the make up” to old regulatory schemes
Is it clear that RJ diverges from CJS in many, vital elements?

- **Offence-crime** centered vs. **harm** centered
- **State/norm** centered vs. **relationships/person** centered
- **Retaliation** (bad vs. bad) vs. **re-empowerment** (making things right)
- **Abstract** idea of conflict vs. **relational** idea of conflict (involving stakeholders)
- **Formalistic**, abstract idea of **punishment** vs. **reparation** (which cannot be formalistic)
RJ : CJS = common base as well?

- **Legally defined instruments** – makes them legally certain, grants the protection of fundamental civil rights.

- **RJ needs law**. RJ needs legal procedure.

- Can different subsystem live within a system whose overall **premises are different**?

- Key for reframing and reforming CJS into “**restorative criminal justice system**”?
Key notion: REPARATION

- **Broad sense**: damage, relationships, past live stories = to repair, what the crime destroyed and what led to crime

- **Main goal** of the reaction to crime: **redefinition**

- **Connective concept** btw. substantive and procedural penal law

- **Focuses on harm** – necessary element for the reaction to crime

- **Focus on victim** – confining her role in the process
Concept of RESTORED Crime

- enlarged notion of reparation

- Partially/fully restored crime - **mitigation or waiver of punishment** – tool for binding the positive outcomes of the RJP

- **restorative punishment** – reconsider the relationship to crime

- **different ways** to achieve according to the proceeding's stage (TABLE)
THANK YOU FOR YOUR ATTENTION.

PETRA & FEDERICO

petrasach@yahoo.com

federicoreggio@yahoo.it

Federico’s video presentation:
https://www.youtube.com/watch?v=qYBg0KBoWJQ&app=desktop