

## TOWARDS A MODEL OF JUSTICE FOR PEOPLE UNDER THE LEGAL AGE

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### **Abstract:**

*In a world in which all institutions and social relations change rapidly, the family also undergoes certain transformations. Thus, we witness the adaptation of individual behaviour and lifestyles to demographic, economic and social changes, which affect contemporary societies; we also become aware of the multiplication and diversity of family patterns, the new models co-existing with the so-called classical one.*

*As far as our society is concerned, the family pattern has moved from an extended structure (within which the rapports between generations used to be governed by stable traditions and moral, spiritual, educational and material values through “unwritten laws”), either towards a small family of the classical type or towards atypical forms, such as single-parent families.*

*Because of these changes, the responsibilities of the family, as a social institution, have been lost. Especially its educational role has been affected. Taking into account that family education, which begins early in a person’s life, determines the development of one’s personality, it is a fact that the consequences are worth worrying about.*

*The usefulness of this project is related to the assumptions that the flaws in family education play an essential role in the crimes committed by people under age.*

*Moreover, we have highlighted the negative results of the decrease of family education on the social integration of people under age, with a view to adapt the prevention system to this form of social reality.*

*We consider that this brief study could serve as guidelines for complex research on the etiological approach of criminal behaviour, as individual or group manifestation, and of under age criminality as a global phenomenon.*

*Starting from the fact that the elimination of causes must gain field in parallel with the minimization of effects, we have pinpointed the importance of the creation of a project of juvenile crime prevention, whose main objective should be the recuperation of the family educational role, besides other objectives, so that the entire problematic of the concern for the people under age and the crime prevention among this category should become part of unitary and rigorous action.*

**Key words:** education, crime, rehabilitation, mediation

Punishment is deficient as regards people under age, consisting in institutionalizing of this category, as a rule, and, exceptionally, in the application of certain restrictions, which may trigger limited possibilities of social reintegration. Therefore, a unitary judicial system, featuring coherent activities meant to diminish juvenile crime, is vital.

The key component of a system which could be considered a real justice for people under age, is represented by the *judge for people under age*, i.e. a particular magistrate, whose role is to work in legal institutions designed especially for this category: law courts, courts of justice and courts of appeal. This judge for people under age should be active in and supported by other institutions, such as, the prosecutor for people under age, the policeman for people under age, the probationary services, the legal guardianship and social assistance services, etc.

Law 304/ 2004 states the gradual organization of courts of justice for people under age and family up to 2008. By next year, these institutions, as the main courts, will deal with civil, family or criminal cases involving people under age. Regarding the ways of attacking the decisions taken within these courts, our laws lack details. Up to 2008, the law only states the gradual establishment of these courts, which would act in this period only for cases of common law courts. The law does not make provisions for the formation of specialized juries at law courts, but only for courts of justice and courts of appeal. As a result, until 2008, most cases will be judged by non-specialist judges (in law courts, where the majority of trials take place), whereas only the courts of justice and courts of appeal will benefit from specialized juries.

On the other hand, the organization of courts of justice for people under age and family implies the existence of separate buildings, logistics, the corresponding staff, etc.<sup>1</sup> Actually, more important than the formal existence of specialized courts of law is the training of the staff to deal with cases involving people under age at the level of the entire legal system.

The social reintegration of the people under age is another problem to be focused by a unitary judicial system. It has often been the case that although the right measure have been taken against the young person, the premises being favourable, they could not integrate socially afterwards, committing the same crimes.

### **Restorative justice – an alternative to classical means of punishment**

In the attempt to fight criminality and persistence in criminal acts, a series of criminal law methods have been used, from forms of punishment not including the lack of liberty to imprisonment. The manner in which punishment is used in a society corresponds to the level of culture and civilization and to the way in which it approaches people and their acts.

The system of justice in Romania should clarify its position regarding both victims and criminals, which should not be considered a product of society but its

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<sup>1</sup> May 3, 2006 – a division for young people and people under age at the Court of Justice of Dolj, where a court of justice for people under age could not be established because of lack of space and money.

members. Irrespective of the acts one may have committed and of the form of punishment, they come back to society; the manner in which the return takes place, the way in which they are reintegrated lies in our hands. On the other hand, the victims need protection and support to overcome the trauma provoked by the crime and by its consequences.

In this context, the system of justice should reconsider its position towards the triangle formed by the criminal, the victim and society; it should develop its contacts with the community it serves through the implication of the latter in the “healing” of conduct regarded as anti-social. This is what restorative justice suggests, offering the possibility of everybody affected by criminal acts – victims, criminal, their families and the community – to become active part of the solving of the conflict, of the problems which have caused the crime and of its consequences.

### **What is restorative justice?**

*“Restorative justice is a process through which all the parties involved in a certain crime get together to make a collective decision about how to solve the consequences of a crime and future implications”*, according to the British criminologist, Tony Marshall.

**Restorative justice** suggests a change of approach with regard to the classical system of justice, taking as a starting point a **participative perspective** towards conflict solving and damage repair. From this perspective, the crime is not regarded as law breaking and a crime against the state but as damage or wrong done to someone. In this context, the act of justice cannot only be concerned with guilt and punishment but with **an act of moral repair, of emotional and material restoration of the triad victim- criminal – community**. Restorative justice requires participation and agreement, focusing on **the complete undertaking of the responsibility from the part of the criminal**. This is equivalent to more than mere acknowledgement of law: the criminal has to face the one they have hurt, to see the extent to which they have been affected by the crime and to admit their obligation to repair the wrong.

One of the characteristics of restorative justice consists precisely in the fact that the criminal and the victim are encouraged towards a direct involvement for the solving of the conflict through dialogue and negotiation, in the presence of the criminal’s family, the victim’s family and of other people, who could offer active support in this reconciliation process.

Although there are different practices in different countries, corresponding to various laws, all the actions within restorative justice are based on the **mediation between victim and criminal**.

Whether called *conferences, meetings, mediations or reconciliations*, whether imposed or not to the criminal and concluded through a *deal* or a *contract* between the parties involved, restorative justice actions establish an exchange of opinions, emotions, feelings and thoughts between those involved. The mediator stimulates the dialogue and the exchange in an atmosphere guaranteeing security.

## **Perspectives of restorative justice in Romania**

One of the concerns of the European Council after the instauration of democratic regimes in Central and Eastern Europe has been the adjustment of the laws in these countries to the principles of the Universal Declaration of human rights of 1948, of the European Declaration of Human Rights of 1958, as well as to other similar documents, along a few directions of evolution for the law systems the central and east-European states.

From the perspective of European integration, a major concern of our country has been towards the adjustment of our laws to European requirements. In this context, restorative justice as a new phenomenon in most of the European countries needs social approval as well as consent from the part of the criminal law system with a view to improve it. It is worth highlighting the positive elements brought about by restorative justice, complementary to criminal justice practices, with best results if undertaken by professionals. In these sense, regular meetings and exchanges between the staff dealing with mediation practices in restorative justice and those belonging to criminal law system (police, prosecution, magistrates' courts) should be encouraged.

Community justice has the role to direct the community members and institutions towards the understanding of the role of justice and to raise awareness of the manner in which criminality affects the lives of community members.

This approach to criminality, especially to the juvenile one, has benefited from the results of restorative justice actions in the states in which this has been applied, ensuring the corruption of the young and of people under age in prison and also, the keeping of the democratic rights and liberties of the individual. For any individual, imprisonment has a powerful physical and psychological impact during and after punishment. The educational action in prisons is often hindered by factors which are difficult to counterattack. For certain categories of criminals (under age and young), social reintegration is more easily achieved through probation and restorative justice actions than through imprisonment, taking into account the reintegration occurs once the individual is free again.

### **Conclusion**

Crimes represent one of the major problems that have to be faced by our society. According to statistics, a large number of anti-social acts are committed by people under age.

There are two serious aspects: the first one is represented by the fact that crimes interfere with general human interests, endangering fundamental and widely acknowledged values; secondly, since anti-social acts are committed by the young generation, the morality and future development of the society are questioned.

Consequently, the young generation being one of the main chances offered to our society to achieve the human and cultural ability necessary to a real modernity, characterized by social and civilization progress, we could rightfully consider that juvenile crime is a risk we cannot afford.

Which are the solutions? Knowing and describing the cause and conditions favouring juvenile crime would be a first step in strategy designing. We must deal

with causes. Thus, individual therapy, supplemented by group and community therapy, has to focus not only on the effect of this social pathology but mainly on its causes.

*To point the cause of juvenile crime we would like to focus on one particular aspect of the educational process, namely the family.* Bearing in mind the vital role of primary experiences for an individual's development, we cannot discuss juvenile crime overlooking the rapports between a person and the primary smaller or larger social structure they belong to.

In other words, are parents the only responsible or the guilty ones for the evolution of their children, of their success or failures, including crimes? The question is worth asking especially when families avoid communication or lack the means to cope with their responsibilities.

Free education is not equivalent to the school of the street, where children are abandoned to themselves in a world that is too tough for them, the rules are those of rivalries and despise and the relationships are marked by aggression and violence. Living only among your kind, in gangs or groups confronted with the same problems fighting for material and moral survival – whether this includes private schools or rich people leisure facilities or the public space with all its difficulties – leads to results familiar to all.

Under the circumstances, we should be concerned with the role played by the family in the educational process. The family is neither a mere hiding place nor the “protecting bubble” some may dream at. Yet, through the sensitive nature of the connection between its members, it could make it act as a secure space for a slow maturing.

Due to its permanence, even if certain links are broken, the family teaches the young to appreciate durability and the lessons learnt inside and outside home. Due to ordinary life needs, it could show how each could contribute to a common project.

Obviously, not all families are ready to play these difficult roles, that being one of the causes triggering the so called “*inequality of chances*” among children:

- firstly, though the differences between their material means, their abilities and means of social insertion in a confusing world;
- secondly, some families can ensure this warm and protective space, whereas other are divided by inner conflicts or the reciprocal despise of its members.

This brings us again to *the necessity of any society to cooperate with families, to help children* protecting them, if the case, from domestic violence. Society must be cured of its passive state and act regarding the problems mentioned above, being aware of the difficulty of later attempts to put right what has been wrong.

*In the case of juvenile criminality, prevention and regular processes value more than urgent action.*

Starting from the premise that *the deficiencies of the family's educational system are the major cause of juvenile crime*, we reach the necessity of a

*prevention strategy*. Its main objectives should be the recuperation of the family values and of the family educational and social control functions.

Thus, any socio-educational intervention and the action undertaken by society with a view to correct and support parents' educational role are vital. This would give access for the people under age to a family background, which stimulates normal development and moral shaping.

Consequently, the problematic of the concern for people under age and of prevention of criminality among them would be part of unitary and rigorous action.

Taking into account the present rigidity of trials and punishment system for people under age, we should not overlook the social reinsertion methods for those who have committed crimes. In the general context of the reform of the judicial system, we should aim at finding solutions for criminality decrease, a possible answer consisting in *restorative justice* and *mediation*<sup>1</sup>, as alternative methods for conflict solving.

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<sup>1</sup> As regards mediation, as an alternative to conflict solving, it has been included in our legislation in law no. 192/ May 16, 2006 regarding mediation and the organizing of the profession of mediator.