

# Some Restorative Justice Benefits to Offenders and Victims of Crime

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## Abstract

*The challenges of restorative justice produce a range of benefits to offenders and victims of crime. It seems that the best way to understand the pros and cons of implementing a certain program is to analyze and to evaluate the results within a certain time period. There are several objectives, which are used to measure the results of restorative justice. These include the following: the offender accepts responsibility for the crime; the offender faces and apologizes to the victim; the victim participates actively in dealing with the crime; the victim achieves adequate reparation and emotional healing; the disturbed relationship is re-established with harmony and balance. These goals pose a different position for the offender and the victim in the framework of restorative justice, as compared to court trials. The two people are active participants and stakeholders in dealing with the crime. They are their own judges and decision-makers as to how to resolve issues arising from the criminal act in the interests of both sides. Thus, restorative justice encourages and motivates them to take responsibility for their own conflict, the offender as to the illegality of his action and the victim as to a responsibility to protect himself in the future.*

*Bearing in mind that restorative justice is a different, nontraditional response to crime, due to its informal, human and nonviolent way of dealing with crime, it produces certain benefits to offenders and victims that are main subject in this work.*

**Key words:** *restorative justice, offender, victim, reconciliation, crime*

## Introduction

The challenges of restorative justice (RJ) produce a range benefits to offenders and victims of crime. It seems that the best way to understand the pros and cons of implementing a certain program is to analyze and to evaluate the results within a certain time period. There are various indicators that measure the success of restorative measures and interventions: *the offender faces and apologizes to the victim; the victim participates actively in dealing with the crime; the victim achieves adequate reparation and emotional healing; the disturbed relationship is re-established with harmony and balance*. This process does not mean denial and avoidance of criminal responsibility because the agreement between the parties should include appropriate obligations on the part of the offenders that in essence, are alternative punishments, not alternatives to punishment.<sup>1</sup> These goals propose a different position for the offender and the victim in the framework of restorative justice, as compared to court trials. They are active participants and stakeholders in dealing with the crime, their own judges and decision-makers how to resolve issues arising from the criminal act in the interests of both sides. Thus, restorative justice encourages and motivates them to take responsibility for their own conflict, i.e. own responsibility how to protect themselves in the future.

The special position of the parties is determined by the informal procedure, which is based specifically on the principles of voluntariness and consent of both parties to participate in restorative process and the presence of a third, neutral person who runs the process and facilitates communication between the parties of the crime. Hence, the uniqueness of the restorative justice can be seen with the determination of basic principles, such as the principles of voluntariness, equality and participation concerning the offender and the victim, the principles of fairness and confidentiality relating to the procedure and the principles of independence and neutrality pertaining to the mediator. They represent the foundation and roadmap to guide restorative processes, without which they lose their meaning and significance.

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<sup>1</sup> Stefanovska, V. (2013) New challenges and perspectives of restorative justice, *Balkan social science Review*, Vol.2, 2013, University Goce Delcev – Stip, p. 47-62.

In Macedonia the issue of restorative justice is left on the margins within the judicial system and does not provoke interest for its development. There are only few isolated projects that slightly contribute to the development of restorative practices, but without strong political will, support and understanding of the program implementation it is doomed to failure. So far only three cases of mediation (VOM) in the juvenile justice system are recorded within the project “Assistance to implementation of Restorative Justice Concept” carried out by the Centre for Local Democracy Development and supported by Norwegian National Mediation Service. The conducted evaluation based on interviews with some of the professionals within the juvenile justice system suggests that VOM is not fully understood by the main stakeholders. Also, the professionals who are direct participants in the VOM are not properly trained on the application of mediation. Ignorance of the law is a serious problem for a professional approach to the application of mediation. Also, the role of defense lawyer against children is minimized, not only from defenders themselves, but also by the professionals. Due to inconsistencies in applying the legislation and the absence of defense, in the restorative justice proceedings (in those three cases), procedural guarantees of the child and the victim, are often violated especially when parties are poor and vulnerable. Concerning victims, in court proceedings they are still marginalized, have a passive role in the trial and their needs are not addressed during the formal procedure. Therefore, the mediation is seen as a significant opportunity for the victim to get compensation, because otherwise, he may face difficulties in acquiring these funds. In this context, professionals put great importance on the victim in the process of mediation. In general, results from the evaluation indicate that based on the conducted VOM, the benefits for the offender and the victim cannot be recognized.<sup>2</sup> Therefore, learning from best practices, adapted to our conditions, offers knowledge-based and evidence-based implementation of restorative justice practices in our country.

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<sup>2</sup> Mirceva, S., Stefanovska, V. & Gogov, B. (2014). Victim-Offender Mediation and observance of procedural Rights in the Macedonian Justice for Children System: Competitive or Balancing? Conference proceedings Criminal Justice and security in Central and Eastern Europe “Understanding professionalism, trust and legitimacy”, Ljubljana, Slovenia 15-17 September, Faculty of Criminal Justice and Security-Ljubljana.

The review of some theoretical perspectives in the literature (particularly those given by John Braithwaite), supported by analysis of several studies will present the positive aspects of restorative justice and acknowledgment of its benefits in response to crime. Though the Republic of Macedonia has a poor practice of application of mediation between victim and offender in the juvenile justice system, we cannot make a proper evaluation of its implementation nor analyze the situation of child-offenders and victims in the restorative processes. However, recognizing the positive impact of restorative justice process on the parties can provoke interest in the professional and scientific community for further research and evaluation for further development and more common implementation of restorative justice practices in our country.

### **1. The position of the offender within the restorative justice**

If we agree that one of the goals of the criminal justice system is to prevent the criminal from re-offending,, then we agree also that this objective can be achieved by identifying the influences that exert a certain pressure on the criminal to commit a crime and, by removing these influences, or at least reduce them and perhaps increase the conscience of the offender to accept responsibility for the crime committed. That means to face the consequences of the crime, to express real remorse, perhaps to reconcile with the victim and to re-establish harmony in the society. One of the main thesis within the restorative justice is to participate in the process of restorative justice instead of receiving punishment, an act that focuses on acceptance of responsibility of the offender and on his reintegration in the community.

How can the above stated objectives be achieved in criminal proceedings where the offender has a status of accused person? In the traditional justice system, because of the supposed presumption of innocence and guaranteed procedural safeguards, offender has little reasons and motivation to accept responsibility for his own actions and even more reasons to remain passive while the criminal justice system prosecutes him and his attorney tries to defend him. The traditional criminal justice system encourages offenders to avoid responsibility and even to deny it, in hope

that can be avoided.<sup>3</sup> It may even be the case that those who choose to accept responsibility, do not feel fully responsible for the committed crime. As Howard Zehr writes concerning the traditional criminal justice system: "If you serve the sentence in prison you will repay the debt to the society, but not to the others ... and he [the offender] will not understand what responsibility is, which is to make things right and to be part of that process." Also, sometimes due to the insufficient evidence to declare the accused guilty in the criminal proceedings, the offender avoids the criminal punishment all together and this "justice" for the offender is unacceptable for the victims. Also, sometimes, the refusal of the offender to take responsibility for the crime in criminal proceedings is supported by guaranteed right to remain silent. For example, in the case of rape when the accused defends himself with silence (which means that he does not deny nor admit guilt), the public prosecutor has to prove his guilt. When the victim offers evidence against the accused, his attorney denies the guilt claiming that the victim has dressed provocatively; she enticed him and thus, has a contributing role in the offense. On the objections of the victim, the attorney will repeat that she is not telling the truth. Then, if the victim resists on the attacks by the attorney, the court will not have enough evidence against the offender and may release him from charges. Therefore, the justice is not done, or more accurately the justice is surrendered.<sup>4</sup>

In contrast, restorative practices encourage the offender to accept responsibility. The question is why? Acceptance of responsibility in the traditional system offers little. The consequences of the imprisonment often cause rejection by the community that stimulate degradation and destruction of self-esteem among offenders. That is the reason for the offender to avoid responsibility. If this traditional system satisfies the needs of the victim and offers a positive experience for the offender and if the criminal sanctions promote reconciliation between the parties, then there will be a reason to accept responsibility. Father Jim Consedine, representative of the Christian church in New Zealand, gives interesting an explanation, saying that the secret to success is *the carrot and stick approach that is part of restorative*

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<sup>3</sup> Schmid, J. Donald (2001) "Restorative Justice in New Zealand: A Model For U.S. Criminal Justice", Wellington, New Zealand, <http://www.fulbright.org.nz/voices/axford/docs/schmid.pdf>, p. 32, retrieved 18.08.2013.

<sup>4</sup> Ibid, p. 30

philosophy. This means that the key to success is that the offender and victim prepare the agreement together. It is the reason (the carrot) that encourages the offender to face and accept responsibility for what he did, and to participate in decision making in regards to the crime.<sup>5</sup>

Second, dealing with the consequences of the crime causes several types of feelings for the offender: shame, regret, remorse, apology, reconciliation. In the theory of restorative justice, the shame has long been recognized as a method of crime control. But the proponents of restorative justice see a difference between stigmatizing and re-integrative shame. Regarding stigmatizing shame, our penal system has traditionally relied on this shame and pain to deter criminals. For example, the pillory, public spitting and similar public and degrading punishments are both painful and embarrassing. While many think that these sanctions existed only in ancient and medieval times, Braithwaite, argues that our penal system is still an institution that demeans and shames. Embarrassing penalties are harsh, and they are not consistent with the values of civilized society. They are even counterproductive as a method of crime control. Howard Zehr points that our criminal justice system reflects a stigmatizing shame. It symbolically says that "what he did was wrong, but you are bad too and there's nothing you can fix. You will always be a former offender."<sup>6</sup> In contrast, Braithwaite introduced the theory of re-integrative shame which refers to the procedure, not to the punishment and which rests on the assumption that people are much more concerned about what their family and friends think about them than about sentence imposed by the penal system. An effective response to any offense is to achieve its disapproval by those whom the offender loves and respects. But that disapproval should not cause stigmatization and humiliation, but should "condemn the offense and not the offender" (the sin not the sinner). The aim is to reintegrate the offender.<sup>7</sup> So, the key to crime control, he says, is the shame that arises as a result of social disapproval, which is also followed by gestures of acceptance and reintegration in the community. To be ashamed, but to gain respect from the community. Therefore, the task of shaming should be given

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<sup>5</sup> Ibid, p.34

<sup>6</sup> Johnstone, G. (2002) *Restorative Justice – ideas, values, debates*, William Publishing, Devon, p. 118-119

<sup>7</sup> Masters, G. & Warner, R. Ann, (1999) "Family Group Conferencing for Victims, Offenders and Communities" (9)

to those who care for the offender.<sup>8</sup> In this context, the reasons for the failure of the criminal justice system to prevent crime in general, are seen in societies that stigmatize and degrade because. Therefore, we accept the thesis that stigmatization reduces the possibilities of the convicted person to become a better person, while on the other hand, re-integrative shame control and reduce crime.<sup>9</sup> In other words, disintegrative shame separates the offender from the local community, lowers self-esteem, sometimes causes anger and revenge, while re-integrative shame opens the door and invites offenders to back into the community. Also, disapproval by the close relatives and friends causes remorse rather than disapproval by unknown officials of the criminal justice system (police, judges) or by unknown victims. Maxwell and Morris, from their studies in New Zealand found that those offenders who did not apologize during the conferences are three times more likely to commit crimes again than for those offenders who have apologized. Also, the conference generated sincerely regret first, because of the presence of the victim, secondly, because of the presence of family members who condemn the offense and third, because of the informality of the restorative justice process. Apology and forgiveness are seen as central elements within the restorative process because they are human and civilized. Success does not require anything more than a verbal apology by the offender which confirms his responsibility, expressed sincere regret, ask forgiveness and promise not to repeat the offense in future.<sup>10</sup>

Third, and equally important benefit to the offender of restorative process is that he receives active support from members of his family who encourage and support him. In this regard, Braithwaite, concludes that native Maori in New Zealand see the modern penal system as barbaric because the offender in the process is left alone without support. According to the Maori,

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<sup>8</sup> Johnstone, G. (2002) *Restorative Justice – ideas, values, debates*, William Publishing, Devon, p. 120-121

<sup>9</sup> Braithwaite, J. (2006) “Narrative and “Compulsory Compassion”, *Law and Social Inquiry*, 31(2), retrieved 15.05.2013 <http://www.anu.edu.au/fellows/jbraithwaite/pubsbysubject/restorativejustice/index.php>, p. 435

<sup>10</sup> Braithwaite, J. (1999) “Restorative justice: Assessing optimistic and pessimistic accounts”, in It Tony, M. (ed.) *Crime and Justice: A Review of Research*, Vol. 25, p. 44

civilized justice requires the family of the offender to stand behind him during the process, and to share the shame of what happened.<sup>11</sup> It is also described by the native population in Manitoba, Canada during restorative justice peacemaking circles with drug addicts who say that restorative meetings are places where parents of the addict, can simultaneously seek help, and where it can be realized that in fact they are even more victims.<sup>12</sup> Otherwise, as Braithwaite explains, the domino theory, which presumes that restorative meeting encourages those with lower level of responsibility to take active responsibility by revealing the whole truth, and in that sense to trigger an active domino effect. Take for example, a student who heard an injured child crying, but did not try the help the child. During the restorative process the student should admit that he was wrong because he had not offered support to the injured child. However, in addition, the teacher who recognizes that his or her failure to teach students how to deal with school violence is also part of the process. Unlike restorative practice that should, the conventional system hits the offender as last domino that undertakes whole responsibility for the crime.<sup>13</sup> So, with restorative justice more persons take responsibility and agree to overcome the effects and causes of delinquent behavior.

Associated with the “active responsibility” and with the “telling the truth”, Key Pranis, highlights the most important part of restorative justice as being listening. The inspiring feature of restorative justice is that it involves listening to the stories of the offender and the victim.<sup>14</sup>

Also, restorative justice fosters social and moral development of the offender. Morality as a socially acceptable way of behavior, which distinguishes good from evil and plays a major role in society to facilitate social harmony. Therefore, restorative justice is a powerful way to learn from mistakes and for young offenders to be educated by his own experience,

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<sup>11</sup> Braithwaite, J. (1996) “Restorative justice and a better future”, retrieved 10.05.2013 <http://iirp.org/library/braithwaite.html>, p. 12

<sup>12</sup> Braithwaite, J. (2001) “Restorative Justice and a New Criminal Law of Substance Abuse”, *Youth and Society*, 33(2), p. 231

<sup>13</sup> Braithwaite, J. (2005) “Between proportionality & impunity: confrontation-truth-prevention” *The American Society of Criminology 2004 Sutherland Address*, *Criminology*, 43(2), p. 292

<sup>14</sup> Braithwaite, J. (2002) “Setting standards for restorative justice”, *British Journal of Criminology* 42 (3), p. 567

because the other participants in the process can tell him why his behavior is unacceptable. In other words, restorative justice offers a moral and factual picture of criminal behavior, its consequences, circumstances and reasons.<sup>15</sup> Hence, young offenders need to learn the consequences of their crime and to hear how it affected other people.

### ***Restorative justice reduces recidivism***

When measuring the success of restorative response to crime, one of the main points in the large number of studies is that restorative justice has bigger impact on reducing the rate of recidivism when compared to the traditional criminal justice. The likelihood of committing a crime is lower for those offenders who participate in the restorative process. The comparative statistics vary and show different rates of recidivism within the different surveys, but all show a reduction in re-offending. In particular, research on the impact of restorative programs in the US show a reduction in recidivism among offenders involved by 33% for 1 year, while in England and Wales, some research shows a lower rate of recidivism among those offenders who were involved in direct mediation. One reason for this decrease in reoffending lies in the fact that dealing with the consequences of their crime awakens empathy and genuine remorse among offenders. Some studies show low rates of recidivism reduction. For example, in England is evidenced a reduction in the recidivism rate of 14% between 1993 and 1994.<sup>16</sup> Further reduction in the rate of recidivism, of 32-34% has been observed among young offenders compared with a control group which members were prosecuted in a court trial. Namely, one meta-analysis conducted in 2005 in 25 different cities in USA with a sample of 11.950 juveniles found that victim-offender based programs succeeded to decrease recidivism for 34%.<sup>17</sup>

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<sup>15</sup>Barton, C. (2001) "Theories of restorative justice", VOMA publication, retrieved 20.06.2013 [http://www.voma.org/docs/barton\\_trj.pdf](http://www.voma.org/docs/barton_trj.pdf), p. 6

<sup>16</sup> Marshall, T. (1999) Restorative justice – an overview, Home Office, England, p. 22

<sup>17</sup> Sered, D. (2006) Mature Justice: Developing Restorative Practices for Serious Young Offenders, Paper presented at the International Institute of Restorative Practices "The Next Step: Developing Restorative Communities", October 18-20, 2006, Bethlehem, PA, p.8

Also, when restorative interventions are applied after serving the sentence, usually in sexual assaults, the data show a reduced rate of recidivism among offenders who have agreed to face their victims and provide adequate reparation to the pain. The difference in the number of re-offenders who did not participate in the restorative process is evident in many analyzes. Thus, analysis of the rate of recidivism among persons convicted of sexual offenses is two times lower in those who participated in the restorative process, that is 8% compared with 16% recidivism among those who did not take part in restorative process.

The above data does not discourage advocates of restorative justice because they believe that reducing recidivism is normal and inevitable consequence of achieving restorative goals. In addition, the expressed satisfaction by the offenders regarding the fairness of the process, the reached agreement and regarding the human and safe treatment during the restorative process are positive indications in many studies.<sup>18</sup>

## **2. The position of the victim in restorative justice**

The role of the victim is, also an inevitable part of the analysis of restorative justice. He along with other actors, receives a central and equal place to offender in restorative processes. Therefore, issues such as the rights of victims, their role, protection, benefits and the relationship with the offender are questions that should gain an important place in debates, analyzes and evaluations of restorative justice. This part of the paper deals with the rights and benefits to victims within restorative justice.

If we turn back to the roots of restorative justice, we will confirm that one of the reasons for the emergence and development of this movement is to improve the status and position of victims in the criminal justice system. However, proponents of restorative justice, promoting its goals and trying to find the most appropriate ways to achieve them, are not satisfied with the extension of the legal rights of victims within the criminal procedure, such as for example, the right to be informed during the proceedings, the right to receive compensation, to give a statement that can has some impact on in

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<sup>18</sup> Khan Shaneela (2005) Mediation in the Criminal System: An improved model for Justice, retrieved 13.06.2013  
<http://voma.org/docs/VORP%20for%20sex%20crimes.pdf>

decision-making. They go even further, believing that the best solution to meet the previously mentioned rights and needs of victims, is outside the criminal justice system because that system is too formal, directed toward offenders and the victims are marginalized. Dignan and Cavadino consider that allowing victims to participate in decision-making within the court proceedings by giving a written or oral statement is an insufficient reform to improve their status. Weaknesses of the statement refer to the little impact on the satisfaction of victim's sense of justice. Even those rights (as a most active form of participation of the victim in the process), does not allow for an exchange of experiences, understanding and reconciliation between victim and offender. Therefore, the restorative justice advocates argue that the impact of the victim statement on the sentence and the type and amount of punishment is uncertain, questionable and open to doubt<sup>19</sup>. Martin Wright, a famous English fighter for the development of restorative justice makes similar comments He considers that the introduction of the victim's statement is a problematic reform because the courtroom is not a place where you can hear the voice of the victim, and where he can exert some impact on the decision. Wright also doubts the claim that the participation of victims in punitive trial is in their interest, because the victim can be exposed to cross-examination, and may fear retaliation by the accused.

In addition, within criminal proceedings, victims are seen as a source of information for police, prosecutors and the court and, as witnesses, are forced to relive the criminal event, an experience that can cause secondary victimization. Victims often speak about their marginalization and neglect. As Christy says in his work (1977): "the victim is totally out of the case that he has no chance, ever to come to know the offender. We leave him outside, angry, maybe humiliated through a cross-examination in court without any human contact with the offender." Further he writes, the "offender has lost the opportunity to explain himself to a person whose evaluation of him might have mattered. He has thereby also lost one of the most important possibilities

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<sup>19</sup> Schmid, J. Donald (2001) "Restorative Justice in New Zealand: A Model For U.S. Criminal Justice", Wellington, New Zealand, available at: <http://www.fulbright.org.nz/voices/axford/docs/schmidd.pdf>, retrieved: 16.11.2010, p.15

for being forgiven.”<sup>20</sup> So, according to advocates of restorative justice, the criminal trial is inflexible, does not discuss the reasons for criminal behavior, nor resolve the conflicts between the two sides. The victim is a double loser, first, in relation to the offender, and second, by a lack of active participation in the debate that might well influence in her later life.<sup>21</sup>

Therefore, the restorative processes can help the victims on many ways that differ from the traditional criminal justice system. First, the position of victims in the restorative process is enhanced by the fact that they are equal participants with other stakeholders in the process. In this regard, one of the most important rights of the victim is the right to choose. It means the right to choose whether to participate in the proceedings, the right to terminate the procedure, or even to choose the level of involvement to have direct or indirect meeting with the offender.<sup>22</sup> The Guidelines for a better implementation of the existing recommendation concerning mediation in penal matters<sup>23</sup>, (CEPEJ (2007) 13, European Commission for the Efficiency of Justice), provide important direction for conducting mediation between offender and victim. That places greater emphasis on the right of the victim's choice to decide whether to participate or not. Namely, according to the Guidelines, the victim should have sufficient information about the potential benefits and risks, including the right to consult with a trusted person or a lawyer prior to deciding about participation. It is important that there be informed consent. Besides the right to choose to participate or not, the principle of voluntariness of the victim (as a first and necessary condition for the application of restorative processes) implies the right to cancel at any time during the procedure without any consequences in the further proceedings. In this regard, the Statement on the position of the victim within the process of mediation (2005), adopted by the European Forum for victim services, declares that free consent of the parties (along with the opportunity to

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<sup>20</sup>Christie, N. (1977) “Conflicts as property”, *The British Journal of Criminology*, Vol. 17 No1, p.8-9

<sup>21</sup>Davis, G. (1992) *Making amends: mediation and reparation in Criminal Justice*, Routledge, London

<sup>22</sup> Wynne, J. (1996) “Leeds mediation and reparation services: Ten years experience with victim-offender mediation”, *Restorative Justice: International Perspectives*, Criminal Justice Press, Monsey, NY, USA

<sup>23</sup> Recommendation No. R. (99) 19 of the Committee of Ministers to member states concerning mediation in penal matters, Council of Europe

withdraw consent at any time) is one of the basic principles. This document recommends that the victim should be given enough time (at least three weeks) to decide whether to participate in VOM with the offender. It also ensures the right of access to legal advice before deciding. This falls under the institute of free legal aid.

Second, restorative justice means verifying the injury caused to the victim and accepting responsibility for that violation by the offender. The punitive justice system often fails to meet the important needs of victims such as the need for restitution of the damage and healing of emotional trauma. However, Barton says that restorative justice offers the offenders the possibility of social and moral development. He also emphasizes restorative justice role in the emotional and moral-psychological treatment of victims, which includes the expression of kindness, respect, regrets, and forgiveness. Apology and forgiveness are key elements of the restorative process, because without them reconciliation between the parties cannot be reached. Reconciliation means to change the offender's feelings of anxiety, fear, shame, humiliation and feelings of uselessness into empathy toward the victim, regret and willingness to pay for the damage. For the victim, on the other hand, reconciliation means a change from a state of insecurity, fear, humiliation, embarrassment and anger to position capable to accept what happened, empathy and willingness to forgive.<sup>24</sup>

Barton, in his work *Empowerment and Retribution in Criminal and Restorative Justice* (2001) supports the thesis that the sense of satisfaction that justice has been served is difficult to achieve for the victim and the offender until they say what they believe is just or unjust, fair or unfair and until they express their feelings of grief, disappointment, anger or other emotions. As the experience of the victims of the traditional criminal justice system, shows, they do not feel heard, nor are their feelings and views considered and taken into account in decision-making.<sup>25</sup> In other words, encouragement of the victims and offenders, as primary stakeholders in the criminal justice system, can begin by giving them a choice to choose one of the alternative ways to

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<sup>24</sup> Barton, C. (2001) "Theories of restorative justice", VOMA publication, retrieved 24.05.2013 [http://www.voma.org/docs/barton\\_trj.pdf](http://www.voma.org/docs/barton_trj.pdf), p. 10-11

<sup>25</sup> Barton, C. (2001) "Empowerment and retribution in criminal and restorative justice", VOMA publication, retrieved 30.05.2013 [http://www.voma.org/docs/barton\\_emp&re.pdf](http://www.voma.org/docs/barton_emp&re.pdf), p. 17

resolve the conflict. The formal criminal justice system should be activated only if the parties fail to reach consensus related to their participation. In that regards, Barton's main thesis is that restorative justice succeeds in those cases where the primary stakeholders speak without fear and actively participate in the discussion about what is acceptable and fair to them. That process primarily requires addressing the imbalance in age, gender, culture, social status, proper preparation of the parties, and the presence of additional supporters on both sides and acceptance of responsibility by the offender.<sup>26</sup>

### **3. Concluding observations**

Several major movements of the field of restorative justice can be found in the literature. According to Donald J. Schmid, the development of restorative justice movement is driven by the increased rights of victims in the criminal justice process, the reactions to high and increasing rates of imprisonment, especially among indigenous people and minorities in certain countries in the world and as a result of the movement toward increased community involvement in crime prevention and in recidivism reduction. An additional challenge is the failure of the criminal justice to respond to crime. In contrast to the traditional justice system, the restorative justice system assumes that both offender and victim are equally important in the process.

It has many advantages and benefits, not only to the parties, but to the community and criminal justice system, as well. In terms of community, restorative justice delegates the power of "decision-makers" to community actors because as Ashworth says in his work (2002) that as closer law enforcement are to the offender, the more likely is that they will be effective in bringing desired changes in his behavior.<sup>27</sup> This paper is divided into two parts. The first section discusses issues related to the situation of the offender in the restorative justice, while the second part encompasses the position and the basic rights of the victim.

Also, another unique value of restorative justice which is implemented in the communities is the fact that restorative justice strives to understand the

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<sup>26</sup> Ibid, p. 17

<sup>27</sup> Ashworth, A. (2002) "Responsibility, rights and restorative justice", *British Journal of Criminology* 42, p. 582

dynamics of criminal behavior, its causes and consequences. Therefore, the community has a responsibility to ensure a quick and appropriate response to crime, to protect victims from secondary victimization, to protect the offender from revenge, and also has a responsibility to create appropriate conditions for full reintegration of both, the victim and the offender in the community.

Benefits to the criminal justice system, means that restorative justice release the court from judicial cases, accelerate the procedure and upon successfully completed mediation, judicial cases will be closed successfully, i.e. court proceedings will be terminated. At last, restorative justice gives voice to the parties themselves to resolve the conflict which is afterwards confirmed by the judiciary. In that way, the court (and the public prosecutor) take the role of auditors and verifiers of mutually reached agreement by the parties.

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