

# 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*

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# 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.)

Year	Mediation in total	Adults	Juveniles
2014	1276	1071	205
2015	1124	937	187
2016	980	836	144
2017	611	543	71

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.)

# Criminal Code

- ▣ **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

# Where to go?

- ▣ 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.

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**Federico's video presentation:**

<https://www.youtube.com/watch?v=qYBg0KBoWJQ&app=desktop>